



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

बुधवार, 29 मई, 2019 / 08 ज्येष्ठ, 1941

हिमाचल प्रदेश सरकार

तकनीकी शिक्षा, व्यावसायिक एवं औद्योगिक प्रशिक्षण विभाग

अधिसूचना

शिमला—02, 14 मई, 2019

संख्या: ईडीएन (टीई) ए(3)9/2016.—हिमाचल प्रदेश के राज्यपाल, भारत के संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से, हिमाचल प्रदेश तकनीकी शिक्षा, व्यावसायिक एवं औद्योगिक प्रशिक्षण विभाग में सह—आचार्य (फार्मेसी) वर्ग—I

(राजपत्रित) के पद के लिए इस अधिसूचना से संलग्न उपाबन्ध-'क' के अनुसार भर्ती और प्रोन्नति नियम बनाते हैं, अर्थात् :—

1. संक्षिप्त नाम और प्रारम्भ.—(1) इन नियमों का संक्षिप्त नाम हिमाचल प्रदेश तकनीकी शिक्षा, व्यावसायिक एवं औद्योगिक प्रशिक्षण विभाग, सह-आचार्य (फार्मेसी) वर्ग—I (राजपत्रित) भर्ती और प्रोन्नति नियम, 2019 है।

(2) ये नियम राजपत्र (ई—गजट), हिमाचल प्रदेश में प्रकाशन की तारीख से प्रवृत्त होंगे।

आदेश द्वारा,
हस्ताक्षरित /—
अतिऽ मुख्य सचिव (तकनीकी शिक्षा)।

उपाबन्ध—"क"

हिमाचल प्रदेश तकनीकी शिक्षा, व्यावसायिक एवं औद्योगिक प्रशिक्षण विभाग में सह-आचार्य (फार्मेसी), वर्ग—I (राजपत्रित) के पद के लिए भर्ती और प्रोन्नति नियम

1. पद का नाम.— सह-आचार्य (फार्मेसी)
2. पद (पदों) की संख्या.— 03 (तीन)
3. वर्गीकरण.— वर्ग—I (राजपत्रित)
4. वेतनमान.— पे बैण्ड ₹ 37400—67000/- जमा ₹ 9000/-ग्रेड पे।
5. चयन पद अथवा अचयन पद.— चयन।
6. सीधी भर्ती के लिए आय.— 18 से 45 वर्ष :

परन्तु सीधे भर्ती किए जाने वाले व्यक्तियों के लिए ऊपरी आयु सीमा, तदर्थ या संविदा के आधार पर नियुक्त किए गए व्यक्तियों सहित पहले से ही सरकार की सेवा में रत अभ्यर्थियों को लागू नहीं होगी :

परन्तु यह और कि यदि तदर्थ या संविदा के आधार पर नियुक्त किया गया अभ्यर्थी इस रूप में नियुक्ति की तारीख को अधिक आयु का हो गया हो, तो वह उसकी ऐसी तदर्थ या संविदा पर की गई नियुक्ति के कारण विहित आयु में शिथिलीकरण का पात्र नहीं होगा :

परन्तु यह और कि ऊपरी आयु सीमा में, अनुसूचित जातियों/अनुसूचित जनजातियों/अन्य पिछड़ा वर्गों और व्यक्तियों के अन्य प्रवर्गों के लिए उस विस्तार तक शिथिलीकरण किया जाएगा, जितना हिमाचल प्रदेश सरकार के साधारण या विशेष आदेश (आदेशों) के अधीन अनुज्ञेय है:

परन्तु यह और भी कि समस्त पब्लिक सेक्टर निगमों तथा स्वायत्त निकायों के कर्मचारियों को, जो ऐसे पब्लिक सेक्टर निगमों तथा स्वायत्त निकायों के प्रारम्भिक गठन के समय ऐसे पब्लिक सेक्टर निगमों/स्वायत्त निकायों में आमेलन से पूर्व सरकारी कर्मचारी थे, सीधी भर्ती के लिए आयु सीमा में ऐसी रियायत अनुज्ञात की जाएगी जैसी सरकारी कर्मचारीयों को अनुज्ञेय है। ऐसी रियायत, तथापि पब्लिक सेक्टर निगमों/स्वायत्त निकायों के ऐसे कर्मचारिवृन्द को अनुज्ञेय नहीं होगी जो तत्पश्चात् ऐसे निगमों/स्वायत्त निकायों द्वारा नियुक्त किए गए थे/किए गए हैं और उन पब्लिक सेक्टर निगमों/स्वायत्त निकायों के प्रारम्भिक गठन के पश्चात् ऐसे निगमों/स्वायत्त निकायों की सेवा में अन्तिम रूप से आमेलित किए गए हैं/किए गए थे।

टिप्पणि.—सीधी भर्ती के लिए आयु सीमा की गणना उस वर्ष के प्रथम दिवस से की जाएगी, जिसमें पद (पदों) को, आवेदन आमन्त्रित करने के लिए, यथास्थिति, विज्ञापित किया गया है या नियोजनालयों को अधिसूचित किया गया है।

7. सीधे भर्ती किए जाने वाले व्यक्ति (व्यक्तियों) के लिए अपेक्षित न्यूनतम शैक्षिक और अन्य अर्हताएं.—(क) अनिवार्य अर्हता (ए).—(I) प्रथम श्रेणी में बी. फार्मा उपाधि के साथ स्नातकोत्तर उपाधि एम.फार्मा./फार्मेसी में विशेषज्ञता की संगत शाखा में फार्मेसी में विज्ञान में स्नातकोत्तर (विज्ञान निष्ठात) और सम्बन्धित विषय में पी एच डी।

(II) भारतीय भेषजी परिषद से मान्यता प्राप्त फार्मा में उपाधि धारक पैथेफिजियोलॉजी, फार्माकॉलॉजी और फार्मेसी प्रेक्टिस के विषयों में सह-आचार्य पद के लिए भी पात्र होंगे।

यदि श्रेणी/डिवीजन प्रदान नहीं की गई है तो कुल अंकों के न्यूनतम साठ प्रतिशत अंकों को प्रथम श्रेणी/डिवीजन के समतुल्य समझा जाएगा:—

यदि ग्रेड पॉन्डर प्रणाली को अपनाया गया है तो संकलित ग्रेड पॉइन्ट औसत को निम्न प्रकार से समतुल्य अंकों में परिवर्तित किया जाएगा।

ग्रेड प्वार्इट	समतुल्य प्रतिशत
6.25	55%
6.75	60%
7.25	65%
7.75	70%
8.25	75%

अनुभव—अध्यापन/अनुसंधान/उद्योग में कम से कम पांच वर्ष का अनुभव वांछनीय है (अनुभव भारतीय भेषजी परिषद द्वारा मान्यता प्राप्त फार्मेसी महाविद्यालयों से प्राप्त होना चाहिए)।

(ख) वांछनीय अर्हता(ए).—हिमाचल प्रदेश की रुद्धियों, रीतियों और बोलियों का ज्ञान और प्रदेश में विद्यमान विशिष्ट दशाओं में नियुक्ति के लिए उपयुक्तता।

8. सीधे भर्ती किए जाने वाले व्यक्ति (व्यक्तियों) के लिए विहित आयु और शैक्षिक अर्हताएं प्रोन्तु व्यक्ति (व्यक्तियों) की दशा में लागू होंगी या नहीं।—आयु— लागू नहीं।

शैक्षिक अर्हता.— हाँ, जैसी उपर्युक्त स्तम्भ संख्या 7(क) (प) के सामने विहित किया गया है।

9. परिवीक्षा की अवधि, यदि कोई हो.—(I) सीधी भर्ती की दशा में—(क) दो वर्ष, जिसका एक वर्ष से अनधिक ऐसी और अवधि के लिए विस्तार किया जा सकेगा, जैसा सक्षम प्राधिकारी विशेष परिस्थितियों में और कारणों को लिखित में अभिलिखित करके आदेश दें।

(ख) संविदा के आधार पर, सेवाधृति के आधार पर, नियुक्ति पर, अधिवर्षिता के पश्चात् पुनर्नियोजन पर और आमेलन पर कोई परिवीक्षा लागू नहीं होगी।

(II) प्रोन्ति की दशा में—कोई परिवीक्षा नहीं।

10. भर्ती की पद्धति.—भर्ती सीधी होगी या प्रोन्ति/सैकेण्डमैंट/स्थानान्तरण रण द्वारा और विभिन्न पद्धतियों द्वारा भरे जाने वाले पद (पदों) की प्रतिशतता.—शतप्रतिशत प्रोन्ति द्वारा, ऐसा न होने पर सीधी भर्ती द्वारा नियमित आधार पर।

11. प्रोन्ति/सैकेण्डमैंट/स्थानान्तरण द्वारा भर्ती की दशा में वे श्रेणियां (ग्रेड) जिनसे प्रोन्ति/सैकेण्डमैंट/स्थानान्तरण किया जाएगा.—सहायक आचार्य (फार्मेसी), में से प्रोन्ति द्वारा जो स्तम्भ संख्या 7 (i) के सामने सीधी भर्ती हेतु विहित शैक्षिक अर्हत रखते हों और जिनका पांच वर्ष का नियमित सेवाकाल या ग्रेड में की गई लगातार तदर्थ सेवा, यदि कोई हो, को सम्मिलित करके पांच वर्ष का नियमित सेवाकाल हो:

(1) परन्तु प्रोन्ति के प्रयोजन के लिए प्रत्येक कर्मचारी को जनजातीय/दुर्गम/कठिन क्षेत्रों और दूरस्थ/ग्रामीण क्षेत्रों में पद (पदों) की ऐसे क्षेत्रों में अध्यधीन, कम से कम एक कार्यकाल तक सेवा करनी होगी:

परन्तु यह और कि दूरस्थ/ग्रामीण क्षेत्रों में तैनाती/स्थानान्तरण के सिवाय उपर्युक्त परन्तुक (1) उन कर्मचारियों के मामले में लागू नहीं होगा, जिनकी अधिवर्षिता के लिए पांच वर्ष या उससे कम की सेवा शेष रही हो, तथापि, पांच वर्ष की यह शर्त प्रोन्ति की दशा में लागू नहीं होगी।

परन्तु यह और भी कि उन अधिकारियों/कर्मचारियों का जिन्होंने जनजातीय/कठिन/दुर्गम क्षेत्रों और दूरस्थ/ग्रामीण क्षेत्रों में कम से कम एक कार्यकाल, तक सेवा नहीं की है, ऐसे क्षेत्र में उसके अपने संवर्ग (काड़र) में सर्वथा वरिष्ठता के अनुसार स्थानान्तरण किया जाएगा।

स्पष्टीकरण I.—उपर्युक्त परन्तुक (1) के प्रयोजन के लिए जनजातीय/दुर्गम/कठिन क्षेत्रों और दूरस्थ/ग्रामीण क्षेत्रों में कार्यकाल से प्रशासनिक अत्यावश्यकताओं/सुविधा को ध्यान में रखते हुए, साधारणतया तीन वर्ष की अवधि या ऐसे क्षेत्रों में तैनाती की इससे कम अवधि अभिप्रेत होगी।

स्पष्टीकरण II.— उपर्युक्त परन्तुक (1) के प्रयोजन के लिए जनजातीय/दुर्गम क्षेत्र निम्न प्रकार से होंगे।

1. जिला लाहौल स्पिति
2. चम्बा जिला का पांगी और भरमौर उप—मण्डल
3. रोहडू उप—मण्डल का डोडरा क्वार क्षेत्र
4. जिला शिमला की रामपुर तहसील का पन्द्रह बीस परगना, मुनीष, दरकाली और ग्राम पंचायत काशापाट।
5. कुल्लू जिला का पन्द्रह बीस परगना
6. कांगड़ा जिला के बैजनाथ उप—मण्डल का बड़ा भंगाल क्षेत्र
7. जिला किन्नौर
8. सिरमौर जिला में उप तहसील कमरउ के काठवाड़ और कोरगा पटवार वृत्त, रेणुकाजी तहसील के भलाड़—भलौना और सांगना पटवार वृत्त और शिलाई तहसील का कोटा पाब पटवार वृत्त।
9. मण्डी जिला में करसोग तहसील का खन्योल—बगड़ा पटवार वृत्त, बाली चौकी उप—तहसील के गाड़ा गोसाई, मठयानी, घनयाड़, थाची, बागी, सोमगाड़ और खोलानाल, पटवार वृत्त पद्धर तहसील के झारवाड़, कुटगढ़, ग्रामन, देवगढ़, ट्रैला, रोपा, कथोग, सिल्ह—भड़वानी, हस्तपुर, घमरेड और भटेड़ पटवार वृत्त, थुनाग तहसील के चियूणी, कालीपार, मानगढ़, थाच—बगड़ा उत्तरी मगरु और दक्षिणी मगरु पटवार वृत्त और सुन्दरनगर तहसील का बटवाड़ा पटवार वृत्त।

स्पष्टीकरण—III.— उपर्युक्त परन्तुक (1) के प्रयोजन के लिए और दूरस्थ/ग्रामीण क्षेत्र निम्न प्रकार से होंगे:—

- (i) उप—मण्डल/तहसील मुख्यालय से 20 किलोमीटर की परिधि से परे के समस्त स्थान
- (ii) राज्य मुख्यालय और जिला मुख्यालय से 15 किलोमीटर की परिधि से परे के समस्त स्थान जहां के लिए बस सेवा उपलब्ध नहीं है और 3 किलोमीटर से अधिक की पैदल यात्रा करनी पड़ती है।
- (iii) कर्मचारी का, उसके प्रवर्ग को ध्यान में लाए बिना अपने गृह नगर या गृह नगर क्षेत्र के साथ लगती 20 किलोमीटर की परिधि के भीतर का क्षेत्र।

(II) प्रोन्नति के सभी मामलों में पद पर नियमित नियुक्त से पूर्व सम्भरक (पोषक) पद में की गई लगातार तदर्थ सेवा, यदि कोई हो, प्रोन्नति के लिए इन नियमों में यथाविहित सेवाकाल के लिए, इस शर्त के अधीन रहते हुए गणना में ली जाएगी, कि सम्भरक (पोषक) प्रवर्ग में तदर्थ नियुक्ति/प्रोन्नति, भर्ती और प्रोन्नति नियमों के उपबन्धों के अनुसार चयन की उचित स्वीकार्य प्रक्रिया को अपनाने के पश्चात् की गई थी :

- (i) परन्तु उन सभी मामलों में, जिनमें कोई कनिष्ठ व्यक्ति सम्भरक (पोषक) पद में अपने कुल सेवाकाल (तदर्थ आधार पर की गई तदर्थ सेवा सहित, जो नियमित सेवा/नियुक्ति के अनुसरण में हो) के आधार पर उपर्युक्त निर्दिष्ट उपबन्धों के कारण विचार किए जाने का पात्र हो जाता है, वहां अपने—अपने प्रवर्ग/पद/काड़र में उससे वरिष्ठ सभी व्यक्ति विचार किए जाने के पात्र समझे जाएंगे और विचार करते समय कनिष्ठ व्यक्ति से ऊपर रखे जाएंगे :

परन्तु यह और कि उन सभी पदधारियों की, जिन पर प्रोन्नति के लिए विचार किया जाना है, कम से कम तीन वर्ष की न्यूनतम अर्हता सेवा या पद के भर्ती और प्रोन्नति नियमों में विहित सेवा, जो भी कम हो, होगी :

परन्तु यह भी कि जहां कोई व्यक्ति पूर्वगामी परन्तुक की अपेक्षाओं के कारण प्रोन्नति किए जाने सम्बन्धी विचार के लिए अपात्र हो जाता है, वहां उससे कनिष्ठ व्यक्ति भी ऐसी प्रोन्नति के विचार के लिए अपात्र समझा जाएगा / समझे जाएंगे।

स्पष्टीकरण।— अन्तिम परन्तुक के अन्तर्गत कनिष्ठ पदधारी प्रोन्नति के लिए अपात्र नहीं समझा जाएगा, यदि वरिष्ठ अपात्र व्यक्ति भूतपूर्व सेनिक है, जिसमें आपातकाल की अवधि के दौरान आमर्ड फोर्सिज में कार्य ग्रहण किया है और जिसे डिमोबीलाइज्ड आमर्ड फोर्सिज परसोनल (रिजर्वेशन ऑफ वैकेन्सीज इन हिमाचल स्टेट नॉन टैक्नीकल सर्विसीज) रूल्ज, 1972 के नियम-3 के उपबन्धों के अन्तर्गत भर्ती किया गया है और इनके अन्तर्गत वरीयता लाभ दिए गए हों या जिसे एक्स सर्विसमेन (रिजर्वेशन ऑफ वैकेन्सीज इन दी हिमाचल प्रदेश टैक्नीकल सर्विसीज) रूल्ज, 1985 के नियम-3 के उपबन्धों के अन्तर्गत भर्ती किया गया हो और इनके अन्तर्गत वरीयता लाभ दिए गए हों।

(II) इसी प्रकार स्थायीकरण के सभी मामलों में ऐसे पद पर नियमित नियुक्ति/प्रोन्नति से पूर्व सम्भरक (पोषक) पद पर की गई लगातार तदर्थ सेवा, यदि कोई हो, सेवाकाल के लिए गणना में ली जाएगी, यदि तदर्थ नियुक्ति/प्रोन्नति, उचित चयन के पश्चात् और भर्ती और प्रोन्नति नियमों के उपबन्धों के अनुसार की गई थी :

परन्तु की गई तदर्थ सेवा को गणना में लेने के पश्चात् जो स्थायीकरण होगा उसके फलस्वरूप पारस्परिक वरीयता अपरिवर्तित रहेगी।

12. यदि विभागीय प्रोन्नति समिति विद्यमान हो तो उसकी संरचना।—जैसा कि सरकार द्वारा समय—समय पर गठित की जाए।

13. भर्ती करने में जिन परिस्थितियों में हिमाचल प्रदेश लोक सेवा आयोग से परामर्श किया जाएगा।—जैसा विधि द्वारा अपेक्षित हो।

14. सीधी भर्ती के लिए अनिवार्य अपेक्षा।—किसी सेवा या पद पर नियुक्ति के लिए अभ्यर्थी का भारत का नागरिक होना अनिवार्य है।

15. सीधी भर्ती द्वारा पद पर नियुक्ति के लिए चयन।—सीधी भर्ती के मामले में पद पर नियुक्ति के लिए चयन, साक्षात्कार/व्यक्तित्व परीक्षण के आधार पर किया जाएगा या यदि, यथास्थिति, हिमाचल प्रदेश लोक सेवा आयोग या अन्य भर्ती अभिकरण/प्राधिकरण ऐसा करना आवश्यक या समीचीन समझे तो पूर्व में ली गई छटनी परीक्षा (वस्तुनिष्ठ प्रकार की)/लिखित परीक्षा या व्यावहारिक परीक्षा या शारीरिक परीक्षण के अनुसार साक्षात्कार/व्यक्तित्व परीक्षण के आधार पर किया जाएगा, जिसका स्तर/पाठ्यक्रम आदि, यथास्थिति, आयोग/अन्य भर्ती अभिकरण/प्राधिकरण द्वारा अवधारित किया जाएगा।

16. आरक्षण।—सेवा में नियुक्ति, हिमाचल प्रदेश सरकार द्वारा समय—समय पर अनुसूचित जातियों/अनुसूचित जनजातियों/अन्य पिछड़े वर्गों और व्यक्तियों के अन्य प्रवर्गों के लिए सेवाओं में आरक्षण की बाबत जारी किए गए आदेश (आदेशों) के अधीन होगी।

17. विभागीय परीक्षा।—सेवा में प्रत्येक सदस्य को समय—समय पर यथा संशोधित हिमाचल प्रदेश विभागीय परीक्षा नियम, 1997 में यथाविहित विभागीय परीक्षा पास करनी होगी।

18. शिथिल करने की शक्ति।—जहां राज्य सरकार की यह राय हो कि ऐसा करना आवश्यक या समीचीन है वहां वह कारणों को लिखित में अभिलिखित करके और हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से, आदेश द्वारा, इन नियमों के किन्हीं उपबन्ध (उपबन्धों) को, किसी वर्ग या व्यक्ति(यों) के प्रवर्ग या पद (पदों) की बाबत शिथिल कर सकेगी।

[Authoritative English text of this Department Notification No. EDN (TE) A (3) 9/2016 dated 14-05-2019 as required under Article 348 (3) of the Constitution of India]

DEPARTMENT OF TECHNICAL EDUCATION, VOCATIONAL & INDUSTRIAL TRAINING

NOTIFICATION

Shimla-171002, the 14th May, 2019

No. EDN (TE) A (3) 9/2016.—In exercise of the powers conferred by proviso to Article 309 of the Constitution of India, the Governor, Himachal Pradesh, in consultation with the Himachal Pradesh Public Service Commission, is pleased to make the Recruitment and Promotion Rules for the post of **Associate Professor (Pharmacy), Class-I (Gazetted)** in the Department of Technical Education, Vocational & Industrial Training, Himachal Pradesh as per Annexure-'A' attached to this notification, namely:—

1. Short title and commencement.—(1) These rules may be called the Himachal Pradesh Technical Education, Vocational & Industrial Training Department, Associate Professor (Pharmacy), Class-I (Gazetted) Recruitment and Promotion Rules, 2019.

(2) These rules shall come into force from the date of publication in the Rajparta, (e-gazette) Himachal Pradesh.

By order,
Sd/-
Addl. Chief Secretary (T.E.).

ANNEXURE-“A”

RECRUITMENT AND PROMOTION RULES FOR THE POST OF ASSOCIATE PROFESSOR (PHARMACY) CLASS-I (GAZETTED) IN THE DEPARTMENT OF TECHNICAL EDUCATION, VOCATIONAL & INDUSTRIAL TRAINING, HIMACHAL PRADESH

- 1. Name of the Post.**— Associate Professor (Pharmacy)
- 2. Number of post(s).**— 03 (three)
- 3. Classification.**— Class-I (Gazetted)
- 4. Scale of Pay.— Pay Band ₹ 37,400-67,000+ ₹9000 Grade Pay**
- 5. Whether “Selection” Post or “Non-selection” post.**—Selection
- 6. Age for direct recruitment.**— Between 18 to 45 years:

Provided that the upper age limit for direct recruits will not be applicable to the candidates already in service of the Government including those who have been appointed on ad-hoc or on contract basis:

Provided further that if a candidate appointed on *ad-hoc* or on contract basis had become overage on the date when he was appointed as such, he shall not be eligible for any relaxation in the prescribed age-limit by virtue of his such *adhoc* or contract appointment:

Provided further that upper age limit is relaxable for Scheduled Castes/Scheduled Tribes/Other Backward classes and other categories of persons to the extent permissible under the general or special order(s) of the Himachal Pradesh Government:

Provided further that the employees of all the Public Sector Corporations and Autonomous Bodies who happened to be Government Servant before absorption in Public Sector Corporations/Autonomous Bodies at the time of initial constitution of such Corporations/Autonomous Bodies shall be allowed age concession in direct recruitment as admissible to Government servants. This concession will not, however, be admissible to such staff of the Public Sector Corporations/Autonomous Bodies who were/are subsequently appointed by such corporations/Autonomous Bodies and who are/were finally absorbed in the service of such Corporations/Autonomous Bodies after initial constitution of the Public Sector Corporations/Autonomous Bodies.

NOTE.—Age limit for direct recruitment will be reckoned on the first day of the year in which the post(s) is/are advertised for inviting applications or notified to the Employment Exchanges or as the case may be.

7. Minimum Educational and other qualifications required for direct recruit(s).—

(a) **ESSENTIAL QUALIFICATION(s).**—(i) First Class Degree in B.Pharm with Master's Degree (M.Pharm.)/Master of Science (M.Sc.) in Pharmacy in appropriate branch of specialization in Pharmacy and Ph.D in appropriate discipline.

A Pharmacy Council of India recognized Pharm. Degree holder shall also be eligible for the post of Associate Professor in the subjects of pathophysiology, Pharmacology and Pharmacy practice.

If a class/division is not awarded, minimum of 60% marks in aggregate shall be considered equivalent to first Class/division.

If a Grade Point System is adopted in Cumulative Grade Point Average will be converted into equivalent marks as below:

Grade Point	Equivalent %
6.25	55%
6.75	60%
7.25	65%
7.75	70%
8.25	75%

(ii) **Experience.**—Minimum of 05 years experience in teaching/research/industry is desirable. (Experience must be in Pharmacy Council of India recognized Pharmacy Colleges).

(b) DESIRABLE QUALIFICATION(s).—Knowledge of customs, manner and dialects of Himachal Pradesh and suitability for appointment in the peculiar conditions prevailing in the Pradesh.

8. Whether age and educational qualification(s) prescribed for direct recruit(s) will apply in the case of the promotee(s).—**Age Not Applicable.**—*Educational Qualification.*—Yes, as prescribed against Column No. 7 (a) (i) above.

9. Period of Probation, if any.—**(i) Direct recruitment.**—(a) Two years subject to such further extension for a period not exceeding one year as may be ordered by the competent authority in special circumstances and reasons to be recorded in writing.

(b) No probation in case of appointment on contract basis, tenure basis, re-employment after superannuation and absorption.

(ii) Promotion.—No probation

10. Method(s) of recruitment, whether by direct recruitment or by promotion/secondment/ transfer and the percentage of post(s) to be filled in by various methods.—100% by promotion, failing which by direct recruitment on regular basis.

11. In case of recruitment by promotion/secondment/transfer, grade(s) from which promotion/secondment/transfer is to be made.—By promotion from amongst the Assistant Professors (Pharmacy) subject to possessing of educational qualification prescribed for direct recruitment against Col. No. 07 (i) above with 05 (five) years regular service or regular combined with continuous *adhoc* service rendered, if any, in the grade:

(I) Provided that for the purpose of promotion every employee shall have to serve at least one term in the Tribal/Difficult/Hard and remote/rural areas , subject to adequate number of post(s) available in such areas:

Provided further that the proviso (I) supra shall not be applicable in the case of those employees who have five years or less service, left for superannuation except posting/transfer in remote/rural area. However, this condition of five years shall not be applicable in case of promotion:

Provided further that Officers/Officials, who have not served at least one tenure in Tribal/Difficult/Hard areas and remote/rural areas shall be transferred to such area strictly in accordance with his /her seniority in the respective cadre.

Explanation-I.—For the purpose of proviso (I) *supra* the “term” in Tribal/Difficult/Hard areas and remote/rural areas shall mean normally three years or less period of posting in such areas keeping in view the administrative exigencies/convenience.

Explanation-II.— For the purpose of proviso (I) *supra* the Tribal/Difficult Areas shall be as under:—

1. District Lahaul & Spiti,
2. Pangi and Bharmour Sub-Division of Chamba District
3. Dodra Kawar Area of Rohru Sub-Division
4. Pandrah Bis Pargana, Munish Darkali and Gram Panchayat Kashapat, Gram Panchayats of Rampur Teshil of District Shimla.

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5. Pandrah Bis Pargana of Kullu District
 6. Bara Bhangal Areas of Baijnath Sub-Division o f Kangra District.
 7. District Kinnaur
 8. Kathwar and Korga Patwar Circles of Kamrau Sub-Tehsil, Bhaladh Bhalona and Sangan Patwar Circles of Renukaji Tehsil and Kota Pab Patwar Circle of Shillai Tehsil, in Sirmaur District.
 9. Khanyol-Bagra Patwar Circle of Karsog Tehsil, Gada-Gussaini, MathyaniGhanyar, Thachi, Baggi, Somgad and Kholanal of Bali-Chowki Sub-Tehsil, Jharwar, Kutgarh, Graman, Devgarh, Trailla, Ropa Kathog, Silh-Badhwani, Hastpur, Ghamrehar and Bhatehar Patwar Circle of Padhar Tehsil, Chiuni, Kalipar, Mangarh, Thach-Bagra, North Magru and South Magru Patwar Circles of Thunag Tehsil and Batwara Patwar Circle of Sundernagar, Tehsil in Mandi District.

Explanation III.— For the purpose of proviso (I) *supra* the Remote/Rural Areas shall be as under:—

- (i) All statitons beyond the readius of 20 kms. from Sub-Division/Tehsil headquarter
- (ii) All stations beyond the redius of 15 kms. from State Headquarter and District head quarters where bus service is not available and on foot journey is more than 3 (three) kms.
- (iii) Home town or area adjoining to area of home town within the radius of 20 kms. of the employee regardless of its category.

(II) In all cases of promotion, the continuous *adhoc* service rendered in the feeder post, if any, prior to regular appointment to the post shall be taken into account towards the length of qualifying service as prescribed in these rules for promotion subject the condition that the *adhoc* appointment/promotion in the feeder category had been made after following proper acceptable process of selection in accordance with the provisions of R&P Rules:

- (i) Provided that in all cases where a junior person becomes eligible for consideration by virtue of his/her total length of service (including the service rendered on adhoc basis followed by regular service/appointment) in the feeder post in view of the provision referred to above, all persons senior to him/ her in the respective category/post/cadre shall be deemed to be eligible for consideration and placed above the junior person in the field of consideration:

Provided that all incumbents to be considered for promotion shall possess the minimum qualifying service of at least three years or that prescribed in the R & P Rules for the post, whichever is less:

Provided further that where a person becomes ineligible to be considered for promotion on account of the requirements of the preceding proviso, the person(s) junior to him/ her shall also be deemed to be ineligible for consideration for such promotion.

Explanation.—The last proviso shall not render the junior incumbents ineligible for consideration for promotion if the senior ineligible person(s) happened to be Ex-Servicemen who have joined Armed Forces during the period of emergency and recruited under the provisions of Rule-3 of the Demobilized Armed Forces Personnel (Reservation of Vacancies in Himachal State Non-Technical Service) Rule, 1972 and having been given the benefit of seniority thereunder or recruited under the provisions of Rule-3 of the Ex-Serviceman (Reservation of vacancies in the Himachal Pradesh Technical Services) Rule, 1985 and having been given the benefit of seniority thereunder.

(ii) Similarly, in all cases of confirmation, continuous *adhoc* service rendered in the feeder post, if any, prior to the regular appointment/promotion against such post shall be taken into account towards the length of service, if the *adhoc* appointment/promotion had been made after proper selection and in accordance with the provision of the R&P Rules:

Provided that intere-seniority as a result of confirmation after taking into account, *adhoc* service rendered shall remain unchanged.

12. If a Departmental Promotion Committee exists, what is its composition.—As may be constituted by the Government from time to time.

13. Circumstances under which the HPPSC is to be consulted in making recruitment.—As required under the Law.

14. Essential requirement for a direct recruitment.—A Candidate for appointment to any service or post must be a citizen of India.

15. Selection for appointment to the post by direct recruitment.—Selection for appointment to the post in the case of direct recruitment shall be made on the basis of interview/personality test or if the Himachal Pradesh Public Service Commission or other recruiting agency/authority as the case may be, so consider necessary or expedient on the basis of interview/personality test preceded by a screening test (objective type) /written test or practical test or physical test, the standard/syllabus etc. of which, will be determined by the Commission/other recruiting agency/authority, as the case may be.

16. Reservation.—The appointment to the service shall be subject to orders/instructions regarding reservation for Scheduled Castes/Schedul Tribes Other Backward Classes/Other categories of persons issued by the Himachal Pradesh Government from time to time.

17. Departmental Examination.—Every member of the service shall pass a departmental examination as prescribed in the Himachal Pradesh Departmental Examination Rules, 1997, as amended from time to time.

18. Power to Relax.—Where the State Government is of the opinion that it is necessary or expedient to do so, it may, by order for reasons to be recorded in writing and in consultation with the Himachal Pradesh Public Service Commission, relax any of the provisions of these rules with respect to any class or category of person(s) or post(s).

LABOUR AND EMPLOYMENT DEPARTMENT**NOTIFICATION***Dated the 29th October, 2018*

No. Shram (A) 6-2/2014 (Awards) Dharamshala.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	09/18	Basheer Deen	E.E. HPPWD, Jawali	01-06-2018
2.	34/18	Vijay Kumar	M/s GVK EMRI & other	01-06-2018
3.	672/16	Ashwani Kumar	President DAV College	01-06-2018
4.	617/16	Ashwani Kumar	DAV Sr. Sec. School	01-06-2018
5.	02/18	Vivek Gagga	M/S GVK EMRI & others	01-06-2018
6.	754/16	Joginder Kumar	D.F.O. Palampur	01-06-2018
7.	755/16	Subhash Chand	D.F.O. Palampur	01-06-2018
8.	236/14	Narender Kumar	TRG Industries	08-06-2018
9.	273/15	Gurdial	E.E. HPPWD/I&PH Killar	15-06-2018
10.	80/17	Nirmala Devi	Principal S.D. Adarsh Sanskrit	18-06-2018
11.	825/16	Joginder Singh	E.E.HPPWD, Nurpur & others	23-06-2018
12.	184/16	Bir Singh	E.E.HPPWD, Nurpur	23-06-2018
13.	182/16	Magho Deen	-do-	23-06-2018
14.	422/16	Joginder Singh	-do-	23-06-2018
15.	185/16	Joginder Singh	-do-	23-06-2018
16.	183/16	Joginder Singh	-do-	23-06-2018
17.	325/16	Bachittar Singh	-do-	23-06-2018
18.	268/16	Rajesh Kumar	-do-	23-06-2018
19.	257/16	Joginder Singh	-do-	23-06-2018
20.	288/16	Rattan Singh	-do-	23-06-2018
21.	412/16	Yash Pal	-do-	23-06-2018
22.	403/16	Ramesh Chand	-do-	23-06-2018
23.	406/16	Gulzari Lal	-do-	23-06-2018
24.	326/16	Babu Ram	-do-	23-06-2018
25.	473/15	Chet Ram	E.E.HPPWD, Karsog	27-06-2018

26.	476/15	Tek Chand	-do-	27-06-2018
27.	475/15	Seva Nand	-do-	27-06-2018
28.	477/15	Govind	-do-	27-06-2018
29.	474/15	Bhagat Singh	-do-	27-06-2018
30.	50/15	Urmila Devi	E.E. HPPWD, Dharampur	27-06-2018
31.	51/15	Partap Chand	-do-	27-06-2018
32.	394/15	Kishori Lal	-do-	27-06-2018
33.	49/15	Biasan Devi	-do-	27-06-2018
34.	57/15	Savitri Devi	-do-	27-06-2018
35.	55/15	Chand Ram	-do-	27-06-2018
36.	53/15	Bhajan Singh	-do-	27-06-2018
37.	52/15	Hamid Khan	-do-	27-06-2018
38.	46/15	Ramesh Chand	-do-	27-06-2018
39.	59/15	Bachani Devi	-do-	27-06-2018
40.	58/15	Babli Devi	-do-	27-06-2018
41.	56/15	Ruma Devi	-do-	27-06-2018
42.	61/15	Kamla Devi	-do-	27-06-2018
43.	60/15	Jalpi Devi	-do-	27-06-2018
44.	206/15	Ravi Kumar	-do-	29-06-2018
45.	692/16	Saravjeet Singh	D.F.O. Dharamshala	29-06-2018
46.	259/14	Parminder Kumar	M/s Nestle India Ltd.	30-06-2018

By order,
NISHA SINGH, IAS
Addl. Chief Secretary (Lab. & Emp.).

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref. No. 09/ 2018

Sh. Basheer Deen s/o Sh. Munshi Deen, r/o Village Dev Bharari, P.O. Sulyali, Tehsil Nurpur, District Kangra, H.P.*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P.*Respondent.*

01-06-2018 Present : None for the petitioner

Sh. Sanjeev Singh Rana, Dy. D.A. with Sh. Kamal Singh, Sr. Asstt. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.30 A.M. Be awaited and put up after lunch hours.

Sd/-
 K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

01-06-2018 Present

: None for the petitioner.

Sh. Sanjeev Singh Rana, Dy. D.A. with Sh. Kamal Singh, Sr. Asstt. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.30 P.M. None appearance of petitioner today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
01-06-2018

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref. No. : 34/ 2018

Sh. Vijay Kumar s/o Sh. Prem Kumar, r/o V.P.O. Charatgarh, District Una, H.P.
...Petitioner.

Versus

1. The Employer/Manager, M/s GVK Emergency Management Research Institute Emergency Management Centre, Village Dharampur, Shimla, Chandigarh Highway, District Solan, H.P. (Work Office).

2. The Managing Director, GVK Emergency Management and Research Institute, Devar Yamzal, Medichal Road, Secundrabad, Telangana (Corporate Office) *...Respondents.*

01-06-2018 Present

: None for the petitioner.

Sh. Jitender Rana, Adv. Csl. for the respondents. Power of attorney has been filed on behalf of respondents.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.32 A.M. Be awaited and put up after lunch hours.

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

01-06-2018 Present : None for the petitioner.
 Sh. Jitender Rana, Adv. Csl. for the respondents.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.35 P.M. None appearance of petitioner today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
 01-06-2018

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref. No. : 672/16

Sh. Ashwani Kumar s/o Sh. Surinder Kumar through Shri N. L. Kaundal (A.R./Legal Advisor) BMS, H.Q. Balakrupi, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi, H.P.
...Petitioner.

Versus

1. The President/Managing Director, D.A.V. College Management Committee, Chitra Gupta Road, New Delhi.

2. The Principal, D.A.V. Public School, Hamirpur, District Hamirpur, H.P.

...Respondents.

01-06-2018 Present : Petitioner with Sh. N.L. Kaundal, A.R.

: Sh. Rahul Gupta, Adv. Csl. for the respondents.

Petitioner has appeared today in pursuance to notice issued by this Court. At this stage, petitioner has made statement for withdrawal of case against the President/Managing Director, D.A.V. College and other. He has stated that he does not want to proceed against respondent besides has prayed for withdrawal of case unconditional. Statement recorded and placed on file. In view of the statement so made by the petitioner as stated above, the reference No. 672/16 is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication at its end.
5. The file, after completion be consigned to the records.

Announced:
01-06-2018

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref. No. : 617/16

Sh. Ashwani Kumar s/o Sh. Amar Nath through Shri N.L. Kaundal (A.R./Legal Advisor)
BMS, H.Q. Balakrupi, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi, H.P.

...Petitioner.

Versus

1. The President/Managing Director, D.A.V. College Management Committee, Chitra Gupta Road, New Delhi.
2. The Principal, D.A.V. Public School, Hamirpur, District Hamirpur, H.P.

...Respondents.

01-06-2018 Present : Petitioner with Sh. N.L. Kaundal, A.R.
: Sh. Rahul Gupta, Adv. Csl. for the respondents.

Petitioner has appeared today in pursuance to notice issued by this Court. At this stage, petitioner has made statement for withdrawal of case against the President/Managing Director, D.A.V. College and other. He has stated that he does not want to proceed against respondent besides has prayed for withdrawal of case unconditional. Statement recorded and placed on file. In view of the statement so made by the petitioner as stated above, the reference No. 617/16 is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.
4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.
5. The file, after completion be consigned to the records.

Announced:
01-06-2018

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref. No. : 02/ 2018

Sh. Vivek Gagga s/o Late Shri Roshan Singh, r/o Village Badhala, Tehsil & District Una,
H.P.Petitioner.

Versus

1. The Employer/Manager, M/s GVK Emergency Management Research Institute Emergency Management Centre, Village Dharampur, Shimla-Chandigarh Highway, District Solan, H.P. (Work Office).
2. The Managing Director, GVK Emergency Management and Research Institute, Devar Yamzal, Medichal Road, Secundrabad, Telangana (Corporate Office)Respondents.

01-06-2018 Present	: None for the petitioner
	: Sh. Jitender Rana, Adv. Csl. for the respondents

Power of attorney has been filed on behalf of respondents.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.34 A.M. Be awaited and put up after lunch hours.

Announced:
01-06-2018

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

01-06-2018 Present	: None for the petitioner.
	: Sh. Jitender Rana, Adv. Csl. for the respondents.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.37 P.M. None appearance of petitioner today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
01-06-2018

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.

Ref. No. : 754/ 2016

Sh. Joginder Kumar s/o Sh. Puran Chand, r/o Village & P.O. Galoti, Tehsil Khudian, Distt. Kangra, H.P.
...Petitioner.

Versus

1. The Divisional Forest Officer, Forest Division Palampur, District Kangra, H.P.
...Respondent.

01-06-2018 Present : None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.36 A.M. Be awaited and put up after lunch hours.

Announced:
01-06-2018

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

01-06-2018 Present : None for the petitioner
: Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.40 P.M. None appearance of petitioner or his ld. Authorised Representative today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
01-06-2018

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref. No. : 755/ 2016

Sh. Subhash Chand s/o Sh. Narad Ram, r/o Village, P.O. Kona Haldra, Tehsil Palampur,
Distt. Kangra H.P.Petitioner.

Versus

1. The Divisional Forest Officer, Forest Division Palampur, District Kangra, H.P.
2. The Principal Chief Conservator of Forests, Himachal PradeshRespondents.

01-06-2018 Present : None for the petitioner

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondents

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.35 A.M. Be awaited and put up after lunch hours.

Announced:
01-06-2018

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

01-06-2018 Present : None for the petitioner
: Sh. Sanjeev Singh Rana, Dy. D.A. for the respondents

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.38 P.M. None appearance of petitioner or his ld. Authorised Representative today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
01-06-2018

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.

Ref. No. : 236/2014

Date of Institution: 30-06-2014

Date of Decision : 08-6-2018

Shri Narinder Singh s/o Shri Harbans Singh, r/o Village & Post Office Dholowal, Tehsil Pathankot, District Gurdaspur, Punjab.*Petitioner.*

Versus

1. The Director, M/s TRG Industries Pvt. Ltd. Working site Village Bharolu, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi, H.P.

Head Office: The Director, M/s TRG Industries Pvt. Ltd., 29, G.M.C. Rail Head Complex, Jammu.

2. The Managing Director, UHL Valley Power Corporation Ltd., Bhatta, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi, H.P.*Respondents.*

Reference/Direct Claim Petition under section 10 of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. N.L. Kaundal, AR
	: Sh. Vijay Kaundal, Adv.
For the Respondent No. 1	: Sh. Gagan Guleria, Adv.
For the Respondent No. 2	: Sh. Karan Pathania, Adv.

AWARD

This is a direct claim petition preferred under section 2 (A) of the Industrial Disputes Act, 1947, as amended upto date ('hereinafter called the Act' for brevity) which was accompanied with claim petition under section 10 of Act and the same was allowed *vide* order dated 30.06.2014 of this court and this application aforestated was treated as claim petition.

2. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged on 12.7.2004 by respondent in Supervisory capacity by a verbal order on monthly salary of Rs. 4,000/- per month and was deployed to work in tunnel Nos. 8 and 9 railway line Katra to Baramula in pursuance to contract was assigned to respondent No. 1 by Railway Department, Government of India. It is alleged that at the time of initial appointment of petitioner, no written appointment letter was issued however petitioner started working for respondent who continued to work at Katra till March 2006 when he was transferred from Katra to Joginder Nagar by another verbal order by respondent No. 1 as respondent No. 2 has assigned contract of work in UHL project stage-III to respondent No. 1. It is alleged that petitioner continued to work at site at Joginder Nagar till 10.5.2011 from March, 2006 in pursuance to which transfer order and thereafter he had not been allowed to work at site as one clerk working with the respondent No.1 asked him to join at Kargil (J&K). Thereafter, *vide* letter No.TRG/RK-116/11-12/54 dated 13.5.2011 petitioner was asked to explain his position in writing as why he did not join at Kargil and the above said letter had been received by petitioner on 17.5.2011 at 5.30 PM which was duly replied by petitioner on 18.5.2011 explaining his position showing his inability to join at Kargil in which he had highlighted ill health

of his mother besides some litigation in which he was to invariably appear in a court however no reply was given to petitioner for letter dated 18.5.2011 and at the same time petitioner was also not allowed to join at worksite at Joginder Nagar (H.P.). The grievance of the petitioner also remains that in the year 2007 petitioner was getting monthly salary of Rs. 4,500/- but the same was reduced from Rs. 4500/- to Rs. 4,000/- without giving 21 days prior notice under Section 9-A of the Industrial Disputes Act, 1947. It further transpires from averments made in the claim petition that some settlement had been entered into between union and respondent No. 2 in presence of Labour Officer, Mandi in which respondent No. 1 had agreed to increase 25% basic wages of all workmen besides agreed that a sum of Rs. 200/- per month as food allowance. The agreement is stated to have been implemented by respondent No. 1 and given 25% increment of basic wages and pay Rs. 200/- as food allowance to all workmen except the present petitioner. It is alleged that petitioner had not received salary *w.e.f.* 1.5.2011 to 10.5.2011 for which matter was brought before Labour Inspector, Joginder Nagar when salary for the month of April was paid but salary for the month of May has not been paid as usual which was misconduct under Model Standing Order Act, 1946. Similarly, petitioner also alleges that he has not received bonus from 1.4.2010 to 31.3.2011 and 1.4.2011 to 10.5.2011 in violation of provisions of Section 5(2) of Payment of Bonus Act, 1936 and even leave with wages and gratuity under Payment of Gratuity Act, 1972 has not been paid. It is alleged that respondent No. 2 was principal employer of respondent No. 1 and as per provisions of Contract Labour (Regulation & Abolition) Act, 1970 respondent No. 1 was liable to pay all the pending dues to petitioner and was required to pay wages from the date of alleged termination. Accordingly, petitioner has prayed for setting aside unlawful termination order dated 11.5.2011 with direction to respondent to reinstate the petitioner in service with full back wages in continuity in service with seniority and all consequential benefits besides he has also prayed that respondent be directed to pay all the pending dues like bonus, wages to the petitioner alongwith 12% interest per annum and other relief petitioner is found entitled.

3. The respondent No. 1 contested claim petition, filed reply *inter-alia* taken preliminary objection of maintainability, cause of action, act and conduct, *locus standi*, suppression of material facts. On merits did not dispute engagement of petitioner as supervisor on monthly salary as alleged in claim petition. It has been emphatically denied that service of petitioner was terminated on 11.5.2011 rather petitioner is stated to have remained absent till date *i.e.* date of filing reply *i.e.* till 17.3.2015 and that no termination was passed as proceedings were still pending before Labour Authorities under Section 12 (5) of the Act. It is alleged that petitioner was issued transfer order dated 10.5.2011 which never acted upon and no written representation was made before respondent on his act and conduct. It is further alleged that letter dated 13.5.2011 had been issued through its authorized officer in charge and reply dated 18.5.2011 had been received but it is emphatically denied that letter dated 13.5.2011 was against the provisions of Model Standing Order Act, 1946 as the letter is stated to have been issued by competent authority of respondent. It is claimed that reply was filed by petitioner on 18.5.2011 had been replied and that request of petitioner to cancel the transfer order to Kargil was rejected and petitioner was asked to bring store clearance before office at worksite Joginder Nagar to which petitioner did not comply and willfully remained absented from 11.5.2011 from worksite at the same time he had also not complied the transfer order and did not join at Kargil. In so far as salary of petitioner and deduction made therein is concerned, the same has been detailed in reply in para No. 4 however asserted that petitioner had absented from duty *w.e.f.* 11.5.2011 as he had left the job of his own will. It is alleged that no termination order had been passed by respondent besides petitioner never approached Grievance Redressal machinery of the respondent company and also did not clarify his position regarding his transfer. Accordingly, petition was sought to be dismissed.

4. The respondent No. 2 contested the claim petition, filed reply alleged that respondent No. 2 had assigned two contract works to respondent No. 1 on 26.7.2005 and 13.6.2007 respectively besides asserted that petitioner was employee of respondent No.1 and not of

respondent No. 2. It is clarified in his reply that dues if any were pending for payment to petitioner the same were liable to be paid by respondent no. 1 only and not by respondent No. 2.

5. The petitioner filed two separate rejoinders, reiterated his stand as maintained in the claim petition. In rejoinder to reply to respondent No. 1 it is alleged that if any dues pending with the respondent the same are required to be paid by respondent No. 1 but if respondent No. 1 failed to pay pending dues then respondent No. 2 was liable to pay pending dues being principal employer under Section 21(4) of Contract Labour (Regulation & Abolition) Act, 1970. However, in rejoinder to reply to respondent No. 2 stand as maintained in claim petition was reiterated.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of letter dated 13.5.2011 Ex. PW1/B, copy of letter dated 18.5.2011 Ex. PW1/C, copy of medical slips dated 10.1.2011 & 2.2.2011 Ex. PW1/D and Ex. PW1/E, copy of discharge slip Ex. PW1/F, copy of school leaving certificate Ex. PW1/G, copy of identity card Ex. PW1/H, copies of wage bills Ex. PW1/I-1 to Ex. PW1/I-3, copy of transfer order Ex. P1/Mark-A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri N.K. Gupta, Director, M/s TRG Industries Pvt. Ltd. 29, GMC, Rail Head Complex, Jammu (J&K), tendered/proved his affidavit Ex. RW1/A, copy of attendance register Ex. RW1/B, copy of salary register Ex. RW1/C, copy of letter dated 13.5.2011 Mark-B, copy of detail of wage drawn by petitioner Ex. Mark-C, copy of salary register (January 2011 to May 2011) Ex. RW1/D, copy of contract dated 23.2.2004 Mark-D, Mark-E is the copy of schedule of item rates, copy of letter dated 26.7.2005 Mark-F, copy of letter dated 13.6.2007 Mark-G, copy of standing orders Mark-H, copy of registration certificate Mark-I, copy of attendance register *w.e.f.* June 2004 to May 2011 Ex. RW1/E, copy of salary register *w.e.f.* January, 2010 to May, 2011 Ex. RW1/F. The respondent examine one Shri Ravinder Kumar, Clerk of M/s TRG Industries Pvt. Ltd. as RW2, tendered/proved his affidavit Ex. RW2/A, copy of minutes of meeting dated 1.5.2008 Ex. RW2/B, copy of letter dated 8.8.2011 Mark- RX, copy of written document dated 8.3.2006 Mark RZ and closed evidence.

7. I have heard the Id. Counsel representing parties gone through evidence on record of this case carefully relevant for dispose of present claim petition.

8. From the contentions raised, following issues were framed on 5.8.2015 for determination:

1. Whether the termination of the services of the petitioner by the respondents *w.e.f.* 11.05.2011 is/was improper and unjustified as alleged? ...OPP.
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? ...OPP.
3. Whether the claim petition is not maintainable in the present form? ...OPR.
4. Whether the petitioner has no cause of action to file the present case as alleged? ...OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ...OPR.
6. Whether the petitioner has no locus standi to file the case as alleged? ...OPR.
7. Whether the petitioner has suppressed and concealed the true and material facts from the Court as alleged? ...OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Partly yes with regard to respondent no.1 & no with regard to respondent No. 2.

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : No

Issue No. 5 : No

Issue No. 6 : No

Issue No. 7 : No

Relief. : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is admitted case of the parties that petitioner above named had been engaged as Supervisor on monthly salary of Rs. 4,000/- by respondent no. 1 who was initially deployed on 12.7.2004 in Tunnel nos. 8 & 9 railway line Katra to Baramula, J&K in pursuance to contract assigned by Railway Department, Government of India. It is equally admitted case of the parties that petitioner continued to work at site aforesighted till March 2006 when he was allegedly transferred to Joginder Nagar by respondent no. 1 through verbal order. It is not in dispute that petitioner worked at site Joginder Nagar till 10.7.2011 and thereafter he was again ordered to be transferred to work at site of Kargil, J&K. It is also admitted case of the parties that respondent No. 2 engaged respondent No. 1 to work at site at Joginder Nagar prior to his transfer to Kargil, J&K. Admittedly, petitioner did not join duty at Kargil, J&K when respondent no. 1 had issued letter No.TRG/RK116/1-12/54 dated 13.5.2011 calling upon petitioner to explain his position for not reporting for duty at Kargil which was duly replied by petitioner on 18.5.2011 irrespective of fact that letter in question was issued by respondent No. 1 had been received by petitioner on 17.5.2011 at 5.30 PM. It is equally admitted case of the petitioner as well as respondent no.1 that no written order of termination had been issued for petitioner on 10.5.2011 or thereafter till date. It is admitted case of the respondent no.1 who as RW1 has admitted that petitioner was employed by him and that respondent No. 2 had no concern or to pay for liability arising out of industrial dispute raised by petitioner. In the backdrop of foregoing admitted facts on record, evidence adduced by the parties needs scanned to determine rights of petitioner and liabilities of parties *i.e.* respondent Nos. 1 and 2 particularly when petitioner claimed reinstatement and other consequential benefits consequent upon his illegal termination.

12. At the outset, it is apt to mention here that although there is no written order of either of respondents qua termination of service of petitioner yet there is ample evidence on record

suggesting that consequent upon transfer to Kargil (J&K) petitioner had not been allowed to join even at Joginder Nagar for which there is no explanation from respondent No. 1 except that petitioner was transferred and for said reason he was asked to seek clearance from worksite at Joginder Nagar wherefrom petitioner was ordered to be transferred to Kargil (J&K) by respondent no.1 which the petitioner had omitted to do. Be it stated that from 10.5.2011 till the date as mentioned in reply of respondent No.1 on 17.3.2015, petitioner had not been engaged. It is admittedly not the case of respondent No.1 that consequent calling upon explanation of petitioner *vide* letter dated 13.5.2011 either any departmental inquiry or charge-sheet had been raised against petitioner *qua* misconduct firstly for not complying the order of transfer passed and absence from duty continuously since 11.5.2011 till date moreso when as per version of respondent No.1 clearance from site at Joginder Nagar had not been obtained by petitioner which was certainly condition prior to joining at Kargil which necessarily follows that under the garb of pendency of proceedings before Labour Inspector-cum-Conciliation Officer, Joginder Nagar, no action was taken. Evidently, there is no authentic evidence establishing that reply/representation of petitioner dated 18.5.2011 was turned down by respondent communicated to petitioner as plea of the respondent No.1 remained that petitioner had not reported for duty initially for four years when reply was filed by respondent No. 1 before this court on 17.3.2015 and also till date. It is admittedly not the case of respondent no. 1 that respondent no. 2 was accountable to pay any liability arising out of industrial dispute in view of specific admission of RW1 in witness box. It is admittedly not the case of respondent No. 1 that respondent No. 2 was willing to engage petitioner as he has come up for the specific plea that petitioner had left the job *i.e.* abandoned job and at the same time has maintained that his service had not been terminated by respondent No. 1. As such, in absence of petitioner from service for several years as stated above under the garb of conciliation proceedings after seven years is clearly suggestive of the fact that service of petitioner had been terminated by respondent No. 1.

13. At the cost of reiteration, it may not be erroneous to mention here that there was no relationship of employer and employee between the petitioner and respondent No. 2 as the contract was signed by respondent No. 2 to respondent No. 1 per pleadings on record. Cross examination of petitioner revealed that when he learnt about his transfer order, he had represented *vide* letter Ex. PW1/C. Another question that petitioner had been asked was that there has not been written order *qua* termination of service rather he stated of his own that respondent No. 1 did not provide him any duty till date of his examination before this court. He has specifically denied that he had abandoned/left the job of respondent No. 1 after 11.5.2011. With these questions in cross-examination to petitioner, it can be safely inferred that respondent No. 1 is blowing hot and cold in same breath by not passing any order on representation Ex. PW1/C and at the same time pleadings that conciliation proceedings were before Labour Inspector-cum-Conciliation Officer and for said reason no action could be taken for last several years. Be it stated that conciliation proceedings commenced in pursuance to demand notice dated 20.7.2011 whereas petitioner had absented from 11.5.2011 but factually these proceedings were pending has not been proved which could lend credence to testimony of (RW1) *i.e.* respondent No. 1.

14. Stepping into witness box as (PW1) petitioner has sworn his affidavit Ex. PW1/A reiterated his stand as maintained in claim petition. In para No.7 of affidavit, it has been specifically alleged that there was unlawful termination by respondent No. 1 as no show cause notice had been issued to him by respondents and at the same time, he was not assigned any duty by respondent No.1 which necessarily follows retrenchment/termination fell within the ambit of Section 25-F of the Act as petitioner had rendered uninterrupted service from 2004 till 11.5.2011. It further remains the case of the petitioner that not only his service had been terminated on 11.5.2011 even dues had not been paid to him by respondent No.1 which is highly unjustified. On the other hand, RW1 Shri N. K. Gupta, the Director of M/s TRG Industries Pvt. Ltd. has sworn affidavit Ex. PW1/A detailing the manner in which petitioner had been engaged and transferred. He has

categorically stated in affidavit that petitioner had been absenting from duty on 11.5.2011 without any information and as such he has been treated absent from duty by company as per rules. He has further stated that petitioner was transferred to Kargil (J&K) from worksite Joginder Nagar *vide* letter dated 10.5.2011 to which the petitioner refused to accept and thereafter letter dated 13.5.2011 was issued to petitioner signed by authorized officer but the petitioner filed reply *vide* letter dated 18.5.2011 besides maintained that there was no violation of Model Standing Order 1946. In cross-examination, RW1 has admitted case of the petitioner by admitting that petitioner was engaged at worksite at Baramula, (J&K) and thereafter worksite at Joginder Nagar and again petitioner was transferred to Kargil (J&K). Be it noticed that RW1 in his cross-examination has admitted that there existed no correspondence/communication from respondent No. 1 to petitioner available on record besides admitted that petitioner has not been charge-sheeted nor domestic inquiry was initiated till date without any plausible reason.

15. In so far as plea of abandonment raised by respondent No. 1 is concerned, the same merits rejection in view of the fact that respondent No. 1 had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent No.1 as (RW1) has specifically admitted that when petitioner abandoned the job he was not served with any notice. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 11.5.2011. No reason whatsoever has been assigned for such in action or omission on the part of respondent No. 1 in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service failing which disciplinary action would be taken. This *prima facie* belies the stand taken by the respondent No. 1 as abandonment has to be proved like any other fact in issue. As such, in absence of any reliable evidence led by respondent No. 1, it would be unsafe to hold that respondent No. 1 had established plea of abandonment. RW2 Ravinder Kumar authorized official of M/s TRG Industries Pvt. Ltd. posted at worksite Joginder Nagar has sworn his affidavit Ex. RW1/A and has specifically admitted in cross-examination that when petitioner left the company, no communication or correspondence was made and at the same time no inquiry was conducted meaning thereby that respondent No. 1 presupposed abandoning of job by petitioner and did not actually ask him to report for duty failing departmental action would be taken. Even if respondent No.1 had transferred the petitioner *vide* transfer order Ex. P1 dated 10.5.2011 issued by RW2 has admitted in cross-examination that at the time of appointment of petitioner terms and conditions were not settled as such being workman, he could not have been transferred to other State when there were admittedly no settlement of terms and conditions of employment of petitioner. Moreover, when respondent No. 1 had transferred petitioner from Joginder Nagar to Kargil (J&K) and his representation dated 18.5.2011 was not turned down which necessarily follows that respondent No. 1 neither opted to reject representation of petitioner nor charge-sheeted him for his unauthorized absence having not reported at Kargil after seeking clearance from site at Joginder Nagar. Mere assertion of RW1 on oath that petitioner had abandoned the job is not sufficient as it was required to be established by cogent and reliable evidence like a fact in issue and respondent having failed to establish that petitioner was called upon join by issuance of any registered when sufficient period had elapsed clearly belies statement of respondent No.1 that petitioner had abandoned the job rather plea of petitioner that from 10.5.2011 when he was not allowed to join duty at Joginder Nagar where he was posted from March 2006 till 2011 deserves to be accepted. As such, plea of respondent No.1 *qua* abandonment of petitioner deserves to be rejected and for aforesaid reasons, it is held that respondent no.1 had illegally terminated service of petitioner by verbal order as he was not allowed to work at site where he was posted moreso when it has come in evidence on record that name of petitioner has been deleted from muster-roll respondent No. 1. In

view of foregoing inference of termination of service of petitioner *w.e.f.* 11.5.2011 can be safely inferred.

16. In so far as violation of Section 25-F of the Act is concerned, suffice would be to state here that petitioner had admittedly been engaged on 12.7.2004 when he initially worked at site at Baramula (J&K) and thereafter from March 2006 till 10.5.2011 when he remained posted at worksite at Joginder Nagar RW1 in cross-examination has not disputed the period for which petitioner actually worked and thus on termination of his service on 11.5.2011 petitioner had actually worked for more than 240 days in preceding 12 months from the date of his termination when it is admittedly case of respondent no.1 that name of petitioner has been struck off from muster-roll of respondent No. 1. It is admittedly not the case of respondent No. 1 that any notice envisaged under Sections 25-F had been issued or compensation in lieu of notice period had been paid to petitioner as such action of respondent No. 1 against petitioner in violation of provisions of Act as stated above is held to illegal. Ld. Authorized Representative for petitioner has placed reliance upon judgment of Hon'ble High Court of Madhya Pradesh (DB) titled as **M.P. Police Housing Corporation and Sher Singh and Anr.** reported in [2012 (133) FLR 66] in which the Hon'ble High Court has held as under:

“.....Daily Wager. Petitioner is a daily wager. He cannot be transferred from original place of posting. Directed to post him at his original place of posting.....”

17. In view of above when there were no settlement of terms and conditions, petitioner could not have been transferred from Joginder Nagar to Kargil (J&K) also in view of judgment of 2012 (*supra*). Ld. counsel for respondent No.1 has vehemently contended that petitioner was primarily working under supervisory capacity who was not covered under the definition of workman envisaged under Section 2(s) of the Act. Ld. Authorized Representative for petitioner has contended that although petitioner was working in supervisory capacity but was certainly drawing wages less than Rs. 10,000/- per month and was thus covered under the definition of workman. As has come in the evidence petitioner was drawing salary of Rs. 6,081/-when he was allegedly terminated in the year 2011 and was not drawing Rs. 10,000/- or above and thus was covered in the definition of workman irrespective of the fact that he was working under supervisory capacity moreso his name existed in muster-roll of company respondent no. 1. On this score also contention of respondent No. 1 merits rejection and it is held that despite working under supervisory capacity petitioner was a workman under Section 2(s) of the Act.

18. In so far as salary of petitioner at the time when he worked with the respondent not in the year 2011 is concerned, RW1 has in cross-examination has admitted that in April, 2011 petitioner was drawing salary of Rs. 6081/- whereas the documentary evidence led by the respondent No.1 revealed that petitioner was drawing salary of Rs. 5000/- in 2007 as per Ex. Rx and in the year 2006 he was drawing salary of Rs. 4300/- but in view of admission of RW2, the authorized official on behalf of respondent no.1 who has been authorized as per Ex. RW2/B to do all administrative work including assigning duty, charge-sheet etc. at worksite at Joginder Nagar, it can be safely concluded that last drawn salary of the petitioner in the month of April 2011 was 6081/-. In so far petitioner having remained unemployed after termination, suffice would be to state here that in his affidavit, petitioner has specifically disclosed to have remained unemployed and the said assertion in affidavit Ex. PW1/A has remained unchallenged in cross examination by respondent and thus this court is left with no option but to hold that petitioner had been terminated in 2011 as stated above who has remained unemployed till date and thus petitioner would be entitled for 50% back wages on his last drawn salary in view of judgment of Hon'ble Apex Court reported in **2014 LLR 673 (SC)** titled as **Bhuvnesh Kumar Dwivedi vs. M/s Hindalco Industries Ltd.** in which Hon'ble Apex Court held that burden to prove that workman remained gainfully employed lied upon employer. Be it stated that there is no iota of evidence from side of respondent

that petitioner was gainfully employed and as such respondent has not discharged this burden of proof. As such, petitioner would be entitled to 50% back wages on his last salary drawn i.e. Rs. 6081/- and other consequential service benefits. In view of foregoing discussions issue no. 1 is decided in affirmative against respondent no.1 holding that service of petitioner was illegally terminated by the respondent No. 1 and not by respondent No. 2 who was not his employee and upon illegal termination of petitioner by respondent No. 1, he would be entitled to relief of reinstatement, seniority and continuity in service and back wages of 50% from last drawn salary as stated above from 11.5.2011 however RW1 admitted that respondent No. 2 has no concerned with respondent *qua* his claim, it is held that respondent no.2 has no liability arising out of this industrial dispute. Issue No. 1 is decided partly in affirmative against respondent No. 1 and in negative against respondent No. 2. Issue No. 2 however is decided as discussed and are answered accordingly.

Issue No. 3 :

19. Ld. Counsel for the respondent has contended that present claim petition is not maintainable. On the other hand, ld. counsel for petitioner has emphasized that claim petition is maintainable as the claim was filed preceded by application under Section 2(A) of the Industrial Disputes Act which had been allowed *vide* order dated 30.6.2014 of this court. As such, when application for direct filing of claim petition had been allowed, the claim of respondent that petition is not legally maintainable under Section 10 of the Industrial Disputes Act, merits rejection. Accordingly, claim petition is held to be maintainable. This issue is answered in favour of petitioner and against the respondent.

Issue No. 4 :

20. It has come in my findings in foregoing paragraphs of judgment that respondent No.1 had illegally terminated service of petitioner in violation of Section 25-F of Act, it is held that petitioner had cause of action against respondent No.1 and not against respondent No. 2. Issue in question is decided accordingly in favour of petitioner.

Issue No. 6 :

21. In view of finding on issue No.1 to 5, it cannot be stated that petitioner has no *locus standi* to sue against respondent No.1 although not against respondent No.2. Issue in question is accordingly answered in negative in favour of petitioner.

Issues No. 7 :

22. This issue was not pressed by ld. counsel for the respondents as such the issue is decided as unpressed against the respondents and in favour of petitioner. Resultantly, issue in question is answered in negative.

Relief :

23. As sequel to my findings on foregoing issues, the termination order dated 11.5.2011 of petitioner is hereby quashed and set aside and the respondent No.1 is accordingly directed to reinstate the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of his illegal termination along-with consequential benefits and **50% back wages**. Accordingly, claim petition is hereby allowed in part against respondent No.1 as stated above and dismissed against respondent No. 2 and reference is accordingly answered in favour of petitioner, leaving the parties to bear their own costs.

24. The reference/direct claim petition under Section 10 of the Industrial Disputes Act, 1947 is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of June 2018.

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)
(CAMP AT PANGI)**

Ref. No.	: 273/2015
Date of Institution	: 13-07-2015
Date of Decision	: 15-06-2018

Shri Gurdial s/o Shri Ghulhu Ram, r/o Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P.*Petitioner.*

Versus

Executive Engineer, Killar Division, I.P.H./ H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P.*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. O.P. Bhardwaj, Adv.
For the Respondent	: Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Gurdial s/o Shri Ghulhu Ram, r/o Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I. &P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated nil received on 03.08.2012 regarding his alleged illegal termination of service *w.e.f.* 01.10.2005 suffers from delay and laches? If not, whether termination of the services of Shri Gurdial s/o Shri Ghulhu Ram, r/o Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.&P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. *w.e.f.* 01.10.2005 without complying the

provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster-roll basis in the year 1998 who continuously worked till October 2005 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing any one month notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner while respondent had illegally terminated his service. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. Grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' as envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner and who are still in service with the respondent namely Mohan Lal who appointed in 1998, Chunku Ram in 2000, Budhi Ram in 2003, Dev Raj in 2007, Sher Singh in 2011 and Raj Kumar in 2011. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October 2005. He further prayed for reinstatement in service *w.e.f.* month of October, 2005 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1998 to October 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01.01.2006 having completed 8 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1998 who remained engaged till 2005

but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2005 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Upreti, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C1 to Ex. RW1/C6 copy of orders/awards and closed the evidence. It is pertinent to mention here that on 12.6.2018 petitioner had moved application for additional evidence so as to prove mandays chart which revealed year of joining and working days of workers. Copy of abovementioned document is enclosed with application. Respondent did not raise any objection as is evident from zimni order dated 15.6.2018. Accordingly application for additional evidence was allowed in which Ex. P1 has been tendered by the petitioner.

7. I have heard the Id. Authorized Representative of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 30.9.2015 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated nil qua his termination of service 01.10.2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...OPP.
2. Whether termination of services of the petitioner by the respondent *w.e.f.* 01.10.2005 is/was improper and unjustified as alleged? ...OPP.
3. If issue No. 1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
4. Whether the claim petition is not maintainable in the present form? ...OPR.

Relief

9. For the reasons detailed hereunder, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Relief : Petition is partly allowed awarding lump sum compensation Rs.75,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 to 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis in the year 1998 continuously worked till October 2005 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division, Chamba district and remained engaged from September 1995 to October 2005. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in October 2005 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand

notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October 2005. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 47 days in the year 1998, 110 days in 1999, 132 days in 2000, 114.5 days in 2001, 113 days in 2002, 114 days in 2003, 102 days in 2004 and 73 days in 2005 and thus a total of his service in 1998 to 2005 in 8 years he had worked for 805.5 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2005 the petitioner had merely worked for 73 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. P1 is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. P1 the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. P1 also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October 2005 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act.

Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/C1 to Ex RW1/C6. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ex. RW1/C1 to Ex. RW1/C6 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these persons being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in October 2005, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherfrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghbir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of *Ajaib Singh v. The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr.*[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intent of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2005 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that

principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calendar year and his termination was in violation of section 25-F of the I.D.Act- Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. His services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable.

[Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947- Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 8 years and actually worked for 805.5 days as per mandays chart on record and that the services of petitioner were disengaged in October 2005 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years i.e. demand**

notice was given on 3.8.2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghbir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case.

21. Ld. Counsel for petitioner relied upon the judgments reported in **2011 (2) Shim. LC 209, Latest HLJ 2011 (HP) 768, 2011 (1) Shim. LC 14, 2011 (2) Shim. LC 389, Latest HLJ 2007 (HP) 159, 2007 (2) Shim. LC 41, Latest HLJ 2012 (HP) 591, Latest HLJ 2011 (HP) 983, Latest HLJ 2007 (HP) 903, Latest HLJ 2014 (HP) Suppl. 585, Latest HLJ 2015 (HP) 93, 2007 (2) Shim. LC 279, 2007 (2) Shim. LC 133, (2003) 4 SCC 27, 2014 (3) Apex Court Judgments 652 (SC), (2001) 2 SCC 386**. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in **2013**.

22. In view of foregoing discussion, a lump-sum compensation of Rs. 75,000/- (Rupees seventy five thousand only) would be a appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within three months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1 to 3 are answered accordingly.

Issue No. 4 :

23. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

24. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 75,000/- (Rupees seventy five thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within three months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of June, 2018.

K. K. SHARMA
*Presiding Judge,
dustrial Tribunal,
haramshala, H.P.
(Camp at Pangi)*

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. 80/2017

Smt. Nirmala Devi w/o Lt. Sh. Roshan Lal, r/o Village Amjad, P.O. Dohgi, Tehsil Bangana, District Una, H.P.Petitioner.

Versus

The Principal, S.D. Adarsh Sanskrit College, Dohgi, Tehsil Bangana, District Una, H.P.
.....*Respondent.*

18-06-2018 Present: None for the petitioner.
Sh. Rakesh Bharti, Adv. Csl. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

18-06-2018 Present: None for the petitioner.
Sh. Rakesh Bharti, Adv. Csl. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.40 P.M. None appearance of petitioner or her ld. counsel today is indicative of the fact that she is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
18-06-2018

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref. No. 825/ 2016

Sh. Joginder Singh s/o Sh. Bidhu Ram, r/o V.P.O. Sadwan, Tehsil Nurpur, Distt. Kangra,
H.P.*Petitioner.*

Versus

1. The Executive Engineer, Nurpur Division, HPPWD Nurpur, Distt. Kangra, H.P.
2. The Executive Engineer, Jawali Division, HPPWD Jawali, Distt. Kangra, H.P.
....*Respondents.*

23-06-2018 Present: None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondents.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

23-06-2018 Present: None for the petitioner
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondents

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.40 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
23-06-2018

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 184/2016

Date of Institution : 26-03-2016

Date of Decision : 23-06-2018

Shri Bir Singh s/o Shri Billu Ram, r/o V.P.O. Suliali, Tehsil Nurpur, District Kangra, H.P.
....Petitioner.

Versus

The Executive Engineer, Nurpur Division, H.P.P.W.D. Nurpur, Tehsil Nurpur, District Kangra, H.P.
....Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. S.D. Sharma, Adv.
For the Respondent	: Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Bir Singh s/o Sh. Billu Ram, r/o V.P.O. Suliali, Tehsil Nurpur, Distt. Kangra, H.P. *w.e.f.* 14.10.1985 by the Executive Engineer, Nurpur Division, HPPWD Nurpur, Dsitt. Kangra, H.P. who had worked as beldar on daily wages basis only for 125 days, during the year 1985, and has raised his industrial dispute *vide* demand notice dated 24-11-2013 after more than 27 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as mentioned above and delay of more than 27 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of September 1985 in Nurpur Division, District Kangra, H.P. where he continuously worked till October 1990 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in October 1990 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national highway and had worked to the satisfaction of respondent and other superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent, he had made several verbal request to respondent by visiting its office as well as Sub-Division who was assured of

reengagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for reengagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily wage basis by HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of "Last come First go". It is alleged that in utter disregard to the provisions of Section 25-G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer-in-Chief *vide* letter No.3058/61 dated 18.1.2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1990 which clearly violates Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called "the Act" for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for reemployment/reengagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in September 1985 in HPPWD Division Nurpur rather he was disengaged in October 1990. It has been categorically stated that petitioner was engaged as daily wager in Sub-Division HPPWD Suliali falling under Jassur Division where he worked intermittently from June 1985 to October 1985 and thereafter left the work and did not approach the respondent/department. It is alleged that HPPWD Division Jassur was shifted to Jawali Division *vide* H.P. Government Notification No.PBW-(A)-A (I) 17/1994 dated 21st July, 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub-Division was shifted to Nurpur Division. It has been emphatically denied that petitioner had completed 240 days rather claimed that petitioner merely worked till October 1985 who did not complete 240 days in any calendar year as reflected in mandays chart. It is alleged that since Suliali Sub-Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in October 1985 did not arise. Moreover, petitioner is alleged to be gainfully employed as an agriculturist. Reiterating his stand, it has been contended that petitioner left the work of beldar in March, 1989. However, denied that any resolution was pending before Assistant Registrar, H.P. State Administrative Tribunal for want of knowledge. In so far as Kusam Sharma is concerned, it has been categorically stated that Kusam Sharma was engaged as helper on daily wage basis by HPPWD Division Dalhousie in 1983 who worked intermittently till November 1998 when said Kusam Sharma made representation to Engineer-in-Chief HPPWD Shimla in December 1999 stipulating therein that she belonged to Suliali village as such permission be granted to work in HPPWD Division Nurpur and request was considered and allowed and adjusted against the post of daily waged Store Clerk. As such, said Kusam Sharma even after joining HPPWD Division Nurpur from Dalhousie Division continued to work with the respondent who was senior to the petitioner having joined service with the respondent/department in 1983. As such, there can be no violation of Section 25-H of the Industrial Disputes Act and for similar reasons, it was not required for respondent to have issued notice calling upon the petitioner for reemployment. It has categorically stated that no other junior persons has been retained or reemployed by the respondent besides

maintained that only those workmen were regularized who continuously worked and fulfill the requisite criteria for regularization as per government policy however, denied that petitioner was terminated by the respondent. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21.7.1994 Ex. RW1/C, copy of office order dated 23.7.1994 Ex. RW1/D, copy of letter dated 18.1.2000 Ex. RW1/E, copy of mandays chart of Smt. Kusum Ex. RW1/F and Ex. RW1/G, copy of letter dated 18.12.1999 Ex. RW1/H, copy of order dated 29.11.2010 Ex. RW1/I and closed evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 31.08.2017 for determination which are as under :—

1. Whether termination of services of the petitioner by the respondent *w.e.f.* 14.10.1985 is/was illegal and unjustified as alleged? ..OPP.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ...OPR.
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? ...OPR.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. The Petitioner has specifically stated on oath that he had completed 240 days having worked from September 1985 to October 1990 besides maintained to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and that his service had been terminated/disengaged verbally in the year 1990 in violation of law by respondent. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not worked from September 1985 but was engaged in June 1985 and he had worked intermittently upto October 1985. The testimony of RW1 corresponds with mandays chart Ex. RW1/B which reveals that petitioner had merely worked for 125 days in the year 1985. As such, from oral as well as documentary evidence on record, it cannot be stated that petitioner had worked for 240 days. Be it stated that for applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days continuously in preceding one year before termination and testimony of petitioner is not substantiated from any corresponding evidence to this effect. As such, when petitioner had not completed 240 days, respondent was not required to issue any notice while disengaging him from service which is not the plea of respondent as it has pleaded that petitioner had abandoned the job.

12. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 1985. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. Ld. Dy. D.A. for the State has contended that even if the respondent has not been able to prove abandonment of job by respondent as required under law yet petitioner was not absolved from his accountability to prove to have worked for a minimum period of 240 days in preceding 12 months from termination. In view of the foregoing, it is held that respondent has not violated Section 25-F of the Act who was not required issue any notice or pay compensation as contended by petitioner.

13. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand, petitioner has emphasized enough that juniors were retained by respondent whereas petitioner had been disengaged despite availability of funds and work. In his affidavit petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the pleas so raised by petitioner, it would be relevant to go through evidence qua period when said Kusum Sharma had been engaged. Before proceeding further it may not be erroneous to mention here that petitioner has failed to prove seniority list of workmen of Suliali Sub-Division which was to be proved so as to establish violation of Section 25-G of the Act. Ld. Dy. D.A. for respondent has placed reliance upon mandays chart of Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub Division No.1 HPPWD Banikhet as reflected in Ex. RW1/G. This document shows that Kusum Sharma had been engaged in **November 1983**. Said Kusum Sharma continued to work till November 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla *vide* application Ex. RW1/H requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub Division which was allowed as letter Ex. RW1/E dated 18.1.2000 revealed that one post of Store Clerk (work charged brought in regular cadre) had been allotted to HPPWD

Nurpur Circle. Said Kusum Sharma was engaged in February 2000 under HPPWD as is evident from Ex. RW1/F who continued to work uninterruptedly till January 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged rather she is stated to be still working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February 2000 she cannot be stated to be junior to petitioner as her service had been placed at the disposal of Executive Engineer HPPWD Nurpur in pursuance to her request allowed by competent authority who had been initially engaged in November 1983 whereas petitioner had been engaged in 1985.

14. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub-Division of Jawali and Nurpur in the year 1994. In the case in hand, evidence qua petitioner revealed that he had been initially engaged in Suliali Sub-Division in June 1985. This Suliali Sub-Division was under Jassur Division out of which Jawali Sub-Division was made in the year 1990 as is evident from Notification dated 21st July, 1994 Ex. RW1/C and Ex. RW1/D on record. These documents further show that Jassur Sub-Division cease to exist upon creation of Nurpur and Jawali Sub Division meaning thereby that on creation of Jawali Sub-Division and Nurpur, Suliali Sub-Division falling under the Nurpur Division got merged in Nurpur Sub-Division. Said Kusum Sharma is shown to have joined at Suliali Sub-Division which consequently fell under Nurpur Sub Division as discussed in foregoing paragraphs. It is evident from evidence on record that petitioner had been working under Suliali Sub-Division since 1985 as stated above but with the bifurcation of Divisions as stated above, it cannot be concluded that petitioner was disengaged in the month of October 1985 by respondent rather prior to creation of these two new Sub-Divisions i.e. Nurpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This plea of respondent has although not been accepted by this court for want of issuance of notice or charge-sheet but it cannot be stated that petitioner had been disengaged by respondent by a verbal order. In view of foregoing plea of petitioner that Section 25-G was violated cannot be accepted and for similar reasons plea of petitioner that respondent had violated Section 25-H of the Act can also not be accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of forgoing discussions, issue no.1 is decided in negative holding that termination of service of petitioner by the respondent in October, 1985 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3 :

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster-roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Issue No.4 :

16. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhagat Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another vs. Garib Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the

provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors., AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

18. As a sequel to my findings on foregoing issues No. 1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of June, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 182/2016

Date of Institution : 26-03-2016

Date of Decision : 23-06-2018

Shri Magho Deen s/o Shri Meer Deen, r/o Village Manoharan, P.O. Sadwan, Tehsil Urpur, District Kangra, H.P.*Petitioner.*

Versus

The Executive Engineer, Nurpur Division, H.P.P.W.D. Nurpur, Tehsil Nurpur, District Kangra (H.P.)*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.D. Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Magho Deen s/o Sh. Meer Deen, r/o Village Manoharan P.O. Sadwan, Tehsil Nurpur, Distt. Kangra, H.P. from 4/1990 by the Executive Engineer, Nurpur Division, HPPWD Nurpur, Distt. Kangra, H.P. who had worked as beldar on daily wages basis only for 57 days, 202.5 days, 180 days and 53 days during the year 1987, 1988, 1989 and 1990 and has raised his industrial dispute *vide* demand notice dated 24-11-2013 after more than 22 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above mentioned and delay of more than 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of September 1986 in Nurpur Division, District Kangra, H.P. where he continuously worked till October 1990 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in October 1990 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national highway and had worked to the satisfaction of

respondent and other superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent, he had made several verbal request to respondent by visiting its office as well as Sub-Division who was assured of reengagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for reengagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily wage basis by HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of "Last come First go". It is alleged that in utter disregard to the provisions of Section 25-G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer-in-Chief *vide* letter No. 3058/61 dated 18.1.2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1990 which clearly violates Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called "the Act" for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for reemployment/reengagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in September 1986 in HPPWD Division Nurpur rather he was disengaged in October 1990. It has been categorically stated that petitioner was engaged as daily wager in Sub-Division HPPWD Suliali falling under Jassur Division where he worked intermittently from August 1987 to February 1990 and thereafter left the work and did not approach the respondent/department. It is alleged that HPPWD Division Jassur was shifted to Jawali Division *vide* H.P. Government Notification No.PBW-(A)-A (I) 17/1994 dated 21st July 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub-Division was shifted to Nurpur Division. It has been emphatically denied that petitioner had completed 240 days rather claimed that petitioner merely worked till, February 1990 who did not complete 240 days in any calendar year as reflected in mandays chart. It is alleged that since Suliali Sub-Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in February, 1990 did not arise. Moreover, petitioner is alleged to be gainfully employed as an agriculturist. Reiterating his stand, it has been contended that petitioner left the work of beldar in March, 1989. However, denied that any resolution was pending before Assistant Registrar, HP State Administrative Tribunal for want of knowledge. In so far as Kusam Sharma is concerned, it has been categorically stated that Kusam Sharma was engaged as helper on daily wage basis by HPPWD Division Dalhousie in 1983 who worked intermittently till November 1998 when said Kusam Sharma made representation to Engineer-in-Chief HPPWD Shimla in December 1999 stipulating therein that she belonged to Suliali village as such permission be granted to work in HPPWD Division Nurpur and request was considered and allowed and adjusted against the post of daily waged Store Clerk. As such, said Kusam Sharma even after joining HPPWD Division Nurpur from Dalhousie Division continued to work with the respondent who was senior to the petitioner having joined service with the respondent/department in 1983. As such, there can be no violation of Section 25-H of the Industrial Disputes Act and for similar reasons, it was not required for respondent to have issued notice calling upon the petitioner for reemployment. It has categorically

stated that no other junior persons has been retained or reemployed by the respondent besides maintained that only those workmen were regularized who continuously worked and fulfill the requisite criteria for regularization as per government policy however, denied that petitioner was terminated by the respondent. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21.7.1994 Ex. RW1/C, copy of office order dated 23.7.1994 Ex. RW1/D, copy of letter dated 18.1.2000 Ex. RW1/E, copy of mandays chart of Smt. Kusum Ex. RW1/F and Ex. RW1/G, copy of letter dated 18.12.1999 Ex. RW1/H, copy of order dated 29.11.2010 Ex. RW1/I and closed evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 31.08.2017 for determination which are as under:—

1. Whether termination of services of the petitioner by the respondent *w.e.f.* April, 1990 is/was illegal and unjustified as alleged? ...OPP.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ...OPR.
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? ...OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. The Petitioner has specifically stated on oath that he had completed 240 days having worked from September 1986 to October 1990 besides maintained to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and that his service had been terminated/disengaged verbally in the year 1990 in violation of law by respondent. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not worked from September, 1986 but was engaged in August 1986 and he had worked intermittently upto February 1990. The testimony of RW1 corresponds with mandays chart Ex. RW1/B which reveals that petitioner had merely worked for 53 days in the year 1990. As such, from oral as well as documentary evidence on record, it cannot be stated that petitioner had worked for 240 days. Be it stated that for applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days continuously in preceding one year before termination and testimony of petitioner is not substantiated from any corresponding evidence to this effect. As such, when petitioner had not completed 240 days, respondent was not required to issue any notice while disengaging him from service which is not the plea of respondent as it has pleaded that petitioner had abandoned the job.

12. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 1990. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. Ld. Dy. D.A. for the State has contended that even if the respondent has not been able to prove abandonment of job by respondent as required under law yet petitioner was not absolved from his accountability to prove to have worked for a minimum period of 240 days in preceding 12 months from termination. In view of the foregoing, it is held that respondent has not violated Section 25-F of the Act who was not required issue any notice or pay compensation as contended by petitioner.

13. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand, petitioner has emphasized enough that juniors were retained by respondent whereas petitioner had been disengaged despite availability of funds and work. In his affidavit petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the pleas so raised by petitioner, it would be relevant to go through evidence qua period when said Kusum Sharma had been engaged. Before proceeding further it may not be erroneous to mention here that petitioner has failed to prove seniority list of workmen of Suliali Sub-Division which was to be proved so as to establish violation of Section 25-G of the Act. Ld. Dy. D.A. for respondent has placed reliance upon mandays chart of Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub-Division No.1 HPPWD Banikhet as reflected in Ex. RW1/G. This document shows that Kusum Sharma had been engaged in **November 1983**. Said Kusum Sharma continued to work till November 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla *vide* application Ex. RW1/H requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub-Division which was allowed as letter Ex. RW1/E dated 18.1.2000 revealed that one post of Store Clerk (work charged brought in regular cadre) had been allotted to HPPWD

Nurpur Circle. Said Kusum Sharma was engaged in February 2000 under HPPWD as is evident from Ex. RW1/F who continued to work uninterruptedly till January 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged rather she is stated to be still working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February 2000 she cannot be stated to be junior to petitioner as her service had been placed at the disposal of Executive Engineer HPPWD Nurpur in pursuance to her request allowed by competent authority who had been initially engaged in November 1983 whereas petitioner had been engaged in 1986.

14. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub-Division of Jawali and Nurpur in the year 1994. In the case in hand, evidence qua petitioner revealed that he had been initially engaged in Suliali Sub-Division in June 1985. This Suliali Sub-Division was under Jassur Division out of which Jawali Sub-Division was made in the year 1990 as is evident from Notification dated 21st July 1994 Ex. RW1/C and Ex. RW1/D on record. These documents further show that Jassur Sub-Division cease to exist upon creation of Nurpur and Jawali Sub-Division meaning thereby that on creation of Jawali Sub Division and Nurpur, Suliali Sub-Division falling under the Nurpur Division got merged in Nurpur Sub-Division. Said Kusum Sharma is shown to have joined at Suliali Sub-Division which consequently fell under Nurpur Sub-Division as discussed in foregoing paragraphs. It is evident from evidence on record that petitioner had been working under Suliali Sub-Division since 1985 as stated above but with the bifurcation of Divisions as stated above, it cannot be concluded that petitioner was disengaged in the month of October 1985 by respondent rather prior to creation of these two new Sub Divisions *i.e.* Nurpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This plea of respondent has although not been accepted by this court for want of issuance of notice or charge-sheet but it cannot be stated that petitioner had been disengaged by respondent by a verbal order. In view of foregoing plea of petitioner that Section 25-G was violated cannot be accepted and for similar reasons plea of petitioner that respondent had violated Section 25-H of the Act can also not accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of forgoing discussions, issue no.1 is decided in negative holding that termination of service of petitioner by the respondent in February, 1990 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3 :

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster-roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Issue No. 4:

16. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhagat Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another vs. Garib Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the

provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors. AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

18. As a sequel to my findings on foregoing issues no.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of June, 2018.

K .K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.

Ref. No. : 422/2016

Date of Institution : 27-06-2016

Date of Decision : 23-06-2018

Shri Joginder Singh s/o Shri Rumal Singh, r/o Village Nera, P.O. Suliali, Tehsil Nurpur,
District Kangra, (H.P.) ...*Petitioner.*

Versus

1. The Executive Engineer, Nurpur, Division, H.P.P.W.D. Nurpur, Tehsil Nurpur,
District Kangra, H.P.

2. The Executive Engineer, Jawali Division, H.P.P.W.D. Jawali, District Kangra, H.P.
...*Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.D. Sharma, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of the services of Shri Joginder Singh s/o Shri Rumal Singh, r/o Village Nera, P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. *w.e.f.* 01-10-1987 by (i) the Executive Engineer, Nurpur Division, H.P.P.W.D. Nurpur, District Kangra, H.P. (ii) the Executive Engineer, Jawali Division H.P.P.W.D. Jawali, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by workman, is legal and justified; whereas he has raised the industrial dispute *vide* demand notice dated 24-11-2013 after lapse of more than 26 years. If not, keeping in view delay of more than 26 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of July 1984 in Nurpur Division, District Kangra, H.P. where he continuously worked till August 1988 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in August 1988 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national highway and had worked to the satisfaction of respondent and other

superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent, he had made several verbal request to respondent by visiting its office as well as Sub-Division who was assured of reengagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for reengagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily wage basis by HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of "Last come First go". It is alleged that in utter disregard to the provisions of Section 25-G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer-in-Chief *vide* letter No. 3058/61 dated 18.1.2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1988 which clearly violates Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for reemployment/reengagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in July 1984 in HPPWD Division Nurpur rather he was disengaged in August, 1988. It has been categorically stated that petitioner was engaged as daily wager in Sub-Division HPPWD Suliali falling under Jassur Division where he worked intermittently from February 1987 to September 1987 and thereafter left the work and did not approach the respondent/department. It is alleged that HPPWD Division Jassur was shifted to Jawali Division *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub-Division was shifted to Nurpur Division. It has been emphatically denied that petitioner had completed 240 days rather claimed that petitioner merely worked till September 1987 who did not complete 240 days in any calendar year as reflected in mandays chart. It is alleged that since Suliali Sub-Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in September 1987 did not arise. Moreover, petitioner is alleged to be gainfully employed as an agriculturist. Reiterating his stand, it has been contended that petitioner left the work of beldar in March, 1989. However, denied that any resolution was pending before Assistant Registrar, H.P. State Administrative Tribunal for want of knowledge. In so far as Kusam Sharma is concerned, it has been categorically stated that Kusam Sharma was engaged as helper on daily wage basis by HPPWD Division Dalhousie in 1983 who worked intermittently till November 1998 when said Kusam Sharma made representation to Engineer-in-Chief HPPWD Shimla in December 1999 stipulating therein that she belonged to Suliali village as such permission be granted to work in HPPWD Division Nurpur and request was considered and allowed and adjusted against the post of daily waged Store Clerk. As such, said Kusam Sharma even after joining HPPWD Division Nurpur from Dalhousie Division continued to work with the respondent who was senior to the petitioner having joined service with the respondent/department in 1987. As such, there can be no violation of Section 25-H of the Industrial Disputes Act and for similar reasons, it was not required for respondent to have issued notice calling upon the petitioner for reemployment. It has categorically

stated that no other junior persons has been retained or reemployed by the respondent besides maintained that only those workmen were regularized who continuously worked and fulfill the requisite criteria for regularization as per government policy however, denied that petitioner was terminated by the respondent. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21.7.1994 Ex. RW1/C, copy of office order dated 23.7.1994 Ex. RW1/D, copy of letter dated 18.1.2000 Ex. RW1/E, copy of mandays chart of Smt. Kusum Ex. RW1/F and Ex. RW1/G, copy of letter dated 18.12.1999 Ex. RW1/H, copy of order dated 29.11.2010 Ex. RW1/I and closed evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 31.08.2017 for determination which are as under:—

1. Whether termination of services of the petitioner by the respondents *w.e.f.* 01.10.1987 is/was illegal and unjustified as alleged? ...OPP.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ...OPR.
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? ...OPR.
5. Relief.
9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1: No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. The Petitioner has specifically stated on oath that he had completed 240 days having worked from July 1984 to August, 1988 besides maintained to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and that his service had been terminated/disengaged verbally in the year 1988 in violation of law by respondent. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not worked from July 1984 but was engaged in February 1987 and he had worked intermittently upto September 1987. The testimony of RW1 corresponds with mandays chart Ex. RW1/B which reveals that petitioner had merely worked for 49½ days in the year 1987. As such, from oral as well as documentary evidence on record, it cannot be stated that petitioner had worked for 240 days. Be it stated that for applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days continuously in preceding one year before termination and testimony of petitioner is not substantiated from any corresponding evidence to this effect. As such, when petitioner had not completed 240 days, respondent was not required to issue any notice while disengaging him from service which is not the plea of respondent as it has pleaded that petitioner had abandoned the job.

12. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 1987. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. Ld. Dy. D.A. for the State has contended that even if the respondent has not been able to prove abandonment of job by respondent as required under law yet petitioner was not absolved from his accountability to prove to have worked for a minimum period of 240 days in preceding 12 months from termination. In view of the foregoing, it is held that respondent has not violated Section 25-F of the Act who was not required issue any notice or pay compensation as contended by petitioner.

13. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand, petitioner has emphasized enough that juniors were retained by respondent whereas petitioner had been disengaged despite availability of funds and work. In his affidavit petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the pleas so raised by petitioner, it would be relevant to go through evidence qua period when said Kusum Sharma had been engaged. Before proceeding further it may not be erroneous to mention here that petitioner has failed to prove seniority list of workmen of Suliali Sub-Division which was to be proved so as to establish violation of Section 25-G of the Act. Ld. Dy. D.A. for respondent has placed reliance upon mandays chart of Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub-Division No.1 HPPWD Banikhet as reflected in Ex. RW1/G. This document shows that Kusum Sharma had been engaged in **November 1983**. Said Kusum Sharma continued to work till November, 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla *vide* application Ex. RW1/H requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub Division which was allowed as letter Ex. RW1/E dated 18.1.2000 revealed that one post of Store Clerk (work charged brought in regular cadre) had been

allotted to HPPWD Nurpur Circle. Said Kusum Sharma was engaged in February 2000 under HPPWD as is evident from Ex. RW1/F who continued to work uninterruptedly till January, 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged rather she is stated to be still working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February 2000 she cannot be stated to be junior to petitioner as her service had been placed at the disposal of Executive Engineer HPPWD Nurpur in pursuance to her request allowed by competent authority who had been initially engaged in November 1983 whereas petitioner had been engaged in 1987.

14. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub-Division of Jawali and Nurpur in the year 1994. In the case in hand, evidence qua petitioner revealed that he had been initially engaged in Suliali Sub-Division in February, 1987. This Suliali Sub-Division was under Jassur Division out of which Jawali Sub Division was made in the year 1990 as is evident from Notification dated 21st July 1994 Ex. RW1/C and Ex. RW1/D on record. These documents further show that Jassur Sub Division cease to exist upon creation of Nurpur and Jawali Sub Division meaning thereby that on creation of Jawali Sub-Division and Nurpur, Suliali Sub-Division falling under the Nurpur Division got merged in Nurpur Sub Division. Said Kusum Sharma is shown to have joined at Suliali Sub-Division which consequently fell under Nurpur Sub Division as discussed in foregoing paragraphs. It is evident from evidence on record that petitioner had been working under Suliali Sub Division since 1987 as stated above but with the bifurcation of Divisions as stated above, it cannot be concluded that petitioner was disengaged in the month of September 1987 by respondent rather prior to creation of these two new Sub Divisions *i.e.* Nurpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This plea of respondent has although not been accepted by this court for want of issuance of notice or charge- sheet but it cannot be stated that petitioner had been disengaged by respondent by a verbal order. In view of foregoing plea of petitioner that Section 25-G was violated cannot be accepted and for similar reasons plea of petitioner that respondent had violated Section 25-H of the Act can also not be accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of forgoing discussions, issue no.1 is decided in negative holding that termination of service of petitioner by the respondent in September 1987 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3 :

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster-roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

16. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhagat Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another vs. Garib Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the

provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors., AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

18. As a sequel to my findings on foregoing issues No.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of June, 2018.

K .K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref No. : 185/2016

Date of Institution : 26-03-2016

Date of Decision: 23-06-2018

Shri Joginder Singh s/o Shri Nikku Ram, r/o Village Loharpura, P.O. Suliali, Tehsil Nurpur,
District Kangra. H.P.*Petitioner.*

Versus

The Executive Engineer, HPPWD Nurpur Division, Nurpur, District Kangra, H.P.
....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.D. Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Joginder Singh s/o Sh. Nikku Ram, r/o Village Loharpura, P.O. Suliali, Tehsil Nurpur, Distt. Kangra, H.P. from 12/1986 by the Executive Engineer, HPPWD Nurpur Division, Nurpur, Distt. Kangra, H.P. who had worked as beldar on daily wages basis only for 26 days during the year 1986 and has raised his Industrial dispute *vide* demand notice dated 24-11-2013 after more than 26 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as mentioned above and delay of more than 26 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of July, 1984 in Nurpur Division, District Kangra, H.P. where he continuously worked till August 1986 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in August 1986 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national highway and had worked to the satisfaction of respondent and other superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent, he had made several verbal request to respondent by

visiting its office as well as Sub-Division who was assured of reengagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for re-engagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily wage basis by HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of "Last come First go". It is alleged that in utter disregard to the provisions of Section 25-G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer-in-Chief *vide* letter No.3058/61 dated 18.1.2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1986 which clearly violates Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called "the Act" for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for reemployment/reengagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in September 1984 in HPPWD Division Nurpur rather he was disengaged in August 1986. It has been categorically stated that petitioner was engaged as daily wager in Sub-Division HPPWD Suliali falling under Jassur Division where he worked intermittently from December 1986 and thereafter left the work and did not approach the respondent/department. It is alleged that HPPWD Division Jassur was shifted to Jawali Division *vide* HP Government Notification No.PBW-(A)-A (I) 17/1994 dated 21st July, 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub-Division was shifted to Nurpur Division. It has been emphatically denied that petitioner had completed 240 days rather claimed that petitioner merely worked till December 1986 who did not complete 240 days in any calendar year as reflected in mandays chart. It is alleged that since Suliali Sub-Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in December, 1986 did not arise. Moreover, petitioner is alleged to be gainfully employed as an agriculturist. Reiterating his stand, it has been contended that petitioner left the work of beldar in December 1986. However, denied that any resolution was pending before Assistant Registrar, H.P. State Administrative Tribunal for want of knowledge. In so far as Kusam Sharma is concerned, it has been categorically stated that Kusam Sharma was engaged as helper on daily wage basis by HPPWD Division Dalhousie in 1983 who worked intermittently till November 1998 when said Kusam Sharma made representation to Engineer-in-Chief HPPWD Shimla in December 1999 stipulating therein that she belonged to Suliali village as such permission be granted to work in HPPWD Division Nurpur and request was considered and allowed and adjusted against the post of daily waged Store Clerk. As such, said Kusam Sharma even after joining HPPWD Division Nurpur from Dalhousie Division continued to work with the respondent who was senior to the petitioner having joined service with the respondent/department in 1983. As such, there can be no violation of Section 25-H of the Industrial Disputes Act and for similar reasons, it was not required for respondent to have issued notice calling upon the petitioner for reemployment. It has categorically stated that no other junior persons has been retained or reemployed by the respondent besides maintained that only those workmen were regularized who continuously worked and fulfill the

requisite criteria for regularization as per government policy however, denied that petitioner was terminated by the respondent. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21.7.1994 Ex. RW1/C, copy of office order dated 23.7.1994 Ex. RW1/D, copy of letter dated 18.1.2000 Ex. RW1/E, copy of mandays chart of Smt. Kusum Ex. RW1/F and Ex. RW1/G, copy of letter dated 18.12.1999 Ex. RW1/H, copy of order dated 29.11.2010 Ex. RW1/I and closed evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 31.08.2017 for determination which are as under:—

1. Whether termination of services of the petitioner by the respondent during December 1986 is/was illegal and unjustified as alleged? ...OPP.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ...OPR.
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? ...OPR.
5. Relief.
9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No.4 : No

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. The Petitioner has specifically stated on oath that he had completed 240 days having worked from July 1984 to August, 1986 besides maintained to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and that his service had been terminated/disengaged verbally in the year 1986 in violation of law by respondent. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not worked from July 1984 but was engaged in December 1986 and he had worked intermittently. The testimony of RW1 corresponds with mandays chart Ex. RW1/B which reveals that petitioner had merely worked for 26 days in the year 1986. As such, from oral as well as documentary evidence on record, it cannot be stated that petitioner had worked for 240 days. Be it stated that for applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days continuously in preceding one year before termination and testimony of petitioner is not substantiated from any corresponding evidence to this effect. As such, when petitioner had not completed 240 days, respondent was not required to issue any notice while disengaging him from service which is not the plea of respondent as it has pleaded that petitioner had abandoned the job.

12. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 1986. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. Ld. Dy. D.A. for the State has contended that even if the respondent has not been able to prove abandonment of job by respondent as required under law yet petitioner was not absolved from his accountability to prove to have worked for a minimum period of 240 days in preceding 12 months from termination. In view of the foregoing, it is held that respondent has not violated Section 25-F of the Act who was not required issue any notice or pay compensation as contended by petitioner.

13. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand, petitioner has emphasized enough that juniors were retained by respondent whereas petitioner had been disengaged despite availability of funds and work. In his affidavit petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the pleas so raised by petitioner, it would be relevant to go through evidence qua period when said Kusum Sharma had been engaged. Before proceeding further it may not be erroneous to mention here that petitioner has failed to prove seniority list of workmen of Suliali Sub-Division which was to be proved so as to establish violation of Section 25-G of the Act. Ld. Dy. D.A. for respondent has placed reliance upon mandays chart of Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub-Division No.1 HPPWD Banikhet as reflected in Ex. RW1/G. This document shows that Kusum Sharma had been engaged in **November 1983**. Said Kusum Sharma continued to work till November, 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla *vide* application Ex. RW1/H requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub-Division which was allowed as letter Ex. RW1/E dated 18.1.2000 revealed that one post of Store Clerk (work charged brought in regular cadre) had been allotted to HPPWD Nurpur Circle. Said Kusum Sharma was engaged in February, 2000 under HPPWD as is evident from Ex. RW1/F who continued to work uninterruptedly till January, 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged rather she is stated to be still

working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February 2000 she cannot be stated to be junior to petitioner as her service had been placed at the disposal of Executive Engineer HPPWD Nurpur in pursuance to her request allowed by competent authority who had been initially engaged in November 1983 whereas petitioner had been engaged in 1986.

14. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub-Division of Jawali and Nurpur in the year 1994. In the case in hand, evidence qua petitioner revealed that he had been initially engaged in Suliali Sub-Division in December 1986. This Suliali Sub Division was under Jassur Division out of which Jawali Sub-Division was made in the year 1990 as is evident from Notification dated 21st July, 1994 Ex. RW1/C and Ex. RW1/D on record. These documents further show that Jassur Sub-Division cease to exist upon creation of Nurpur and Jawali Sub-Division meaning thereby that on creation of Jawali Sub-Division and Nurpur, Suliali Sub Division falling under the Nurpur Division got merged in Nurpur Sub Division. Said Kusum Sharma is shown to have joined at Suliali Sub-Division which consequently fell under Nurpur Sub Division as discussed in foregoing paragraphs. It is evident from evidence on record that petitioner had been working under Suliali Sub-Division since 1986 as stated above but with the bifurcation of Divisions as stated above, it cannot be concluded that petitioner was disengaged in the month of December 1986 by respondent rather prior to creation of these two new Sub Divisions i.e. Nurpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This plea of respondent has although not been accepted by this court for want of issuance of notice or charge- sheet but it cannot be stated that petitioner had been disengaged by respondent by a verbal order. In view of foregoing plea of petitioner that Section 25-G was violated cannot be accepted and for similar reasons plea of petitioner that respondent had violated Section 25-H of the Act can also not be accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of forgoing discussions, issue no.1 is decided in negative holding that termination of service of petitioner by the respondent in December 1986 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3 :

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster-roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Issue No. 4:

16. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there

was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors., AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

18. As a sequel to my findings on foregoing issues no.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of June, 2018.

K .K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.

Ref. No. : 183/2016

Date of Institution : 26-03-2016

Date of Decision : 23-06-2018

Shri Joginder Singh s/o Shri Puran Chand, r/o V.P.O. Suliali, Tehsil Nurpur, District Kangra (H.P.)
...Petitioner.

Versus

The Executive Engineer, HPPWD, Nurpur Division, Nurpur, District Kangra (H.P.)
...Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.D. Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication.—

“Whether alleged termination of services of Sh. Joginder Singh s/o Sh. Puran Chand, V.P.O. Suliali, Tehsil Nurpur, Distt. Kangra, H.P. from 4/1990 by the Executive Engineer, Nurpur Division, HPPWD Nurpur, Distt. Kangra, H.P. who had worked as beldar on daily wages basis only for 14 days, 206 days, 256 days, 188 days, and 58.5 days during the year 1986, 1987, 1988, 1989 and 1990 and has raised Industrial dispute *vide* demand notice dated 24-11-2013 after more than 22 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above mentioned and delay of more than 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of September, 1984 in Nurpur Division, District Kangra, H.P. where he continuously worked till October 1989 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in August 1986 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national highway and had worked to the satisfaction of respondent and other superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent, he had made several verbal request to respondent by visiting its office as well as Sub-Division who was assured of reengagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for reengagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily wage basis by HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of "Last come First go". It is alleged that in utter disregard to the provisions of Section 25-G of Industrial Disputes Act junior

persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer-in-Chief *vide* letter No.3058/61 dated 18.1.2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1989 which clearly violates Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called "the Act" for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for reemployment/reengagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in September 1984 in HPPWD Division Nurpur rather he was disengaged in October 1989. It has been categorically stated that petitioner was engaged as daily wager in Sub-Division HPPWD Suliali falling under Jassur Division where he worked intermittently from December 1986 to December 1989 and thereafter left the work and did not approach the respondent/department. It is alleged that HPPWD Division Jassur was shifted to Jawali Division *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub Division was shifted to Nurpur Division. It has been emphatically denied that petitioner had completed 240 days rather claimed that petitioner merely worked till December 1989 who did not complete 240 days in any calendar year as reflected in mandays chart. It is alleged that since Suliali Sub Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in December 1989 did not arise. Moreover, petitioner is alleged to be gainfully employed as an agriculturist. Reiterating his stand, it has been contended that petitioner left the work of beldar in March 1989. However, denied that any resolution was pending before Assistant Registrar, H.P. State Administrative Tribunal for want of knowledge. In so far as Kusam Sharma is concerned, it has been categorically stated that Kusam Sharma was engaged as helper on daily wage basis by HPPWD Division Dalhousie in 1983 who worked intermittently till November 1998 when said Kusam Sharma made representation to Engineer-in-Chief HPPWD Shimla in December 1999 stipulating therein that she belonged to Suliali village as such permission be granted to work in HPPWD Division Nurpur and request was considered and allowed and adjusted against the post of daily waged Store Clerk. As such, said Kusam Sharma even after joining HPPWD Division Nurpur from Dalhousie Division continued to work with the respondent who was senior to the petitioner having joined service with the respondent/department in 1983. As such, there can be no violation of Section 25-H of the Industrial Disputes Act and for similar reasons, it was not required for respondent to have issued notice calling upon the petitioner for reemployment. It has categorically stated that no other junior persons has been retained or reemployed by the respondent besides maintained that only those workmen were regularized who continuously worked and fulfill the requisite criteria for regularization as per government policy however, denied that petitioner was terminated by the respondent. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as

RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21.7.1994 Ex. RW1/C, copy of office order dated 23.7.1994 Ex. RW1/D, copy of letter dated 18.1.2000 Ex. RW1/E, copy of mandays chart of Smt. Kusum Ex. RW1/F and Ex. RW1/G, copy of letter dated 18.12.1999 Ex. RW1/H, copy of order dated 29.11.2010 Ex. RW1/I and closed evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 31.08.2017 for determination which are as under:—

1. Whether termination of services of the petitioner by the respondent during April 1990 is/was illegal and unjustified as alleged? ...OPP.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ...OPR.
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? ...OPR.
5. Relief.
9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. The Petitioner has specifically stated on oath that he had completed 240 days having worked from September 1984 to October, 1989 besides maintained to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and that his service had been terminated/disengaged verbally in the year 1989 in violation of law by respondent. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not worked from September 1984 but was engaged

in December, 1986 and he had worked intermittently upto December 1989. The testimony of RW1 corresponds with mandays chart Ex. RW1/B which reveals that petitioner had merely worked for 188 days in the year 1989. As such, from oral as well as documentary evidence on record, it cannot be stated that petitioner had worked for 240 days. Be it stated that for applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days continuously in preceding one year before termination and testimony of petitioner is not substantiated from any corresponding evidence to this effect. As such, when petitioner had not completed 240 days, respondent was not required to issue any notice while disengaging him from service which is not the plea of respondent as it has pleaded that petitioner had abandoned the job.

12. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 1989. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. Ld. Dy. D.A. for the State has contended that even if the respondent has not been able to prove abandonment of job by respondent as required under law yet petitioner was not absolved from his accountability to prove to have worked for a minimum period of 240 days in preceding 12 months from termination. In view of the foregoing, it is held that respondent has not violated Section 25-F of the Act who was not required issue any notice or pay compensation as contended by petitioner.

13. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand, petitioner has emphasized enough that juniors were retained by respondent whereas petitioner had been disengaged despite availability of funds and work. In his affidavit petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the pleas so raised by petitioner, it would be relevant to go through evidence qua period when said Kusum Sharma had been engaged. Before proceeding further it may not be erroneous to mention here that petitioner has failed to prove seniority list of workmen of Suliali Sub-Division which was to be proved so as to establish violation of Section 25-G of the Act. Ld. Dy. D.A. for respondent has placed reliance upon mandays chart of Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub-Division No.1 HPPWD Banikhet as reflected in Ex. RW1/G. This document shows that Kusum Sharma had been engaged in **November 1983**. Said Kusum Sharma continued to work till November, 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla *vide* application Ex. RW1/H requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub-Division which was allowed as letter Ex. RW1/E dated 18.1.2000 revealed that one post of Store Clerk (work charged brought in regular cadre) had been allotted to HPPWD Nurpur Circle. Said Kusum Sharma was engaged in February 2000 under HPPWD as is evident from Ex. RW1/F who continued to work uninterruptedly till January 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged rather she is stated to be still working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February 2000 she cannot be stated to be junior to petitioner as her service had been placed at the disposal of Executive Engineer HPPWD Nurpur in pursuance to her request allowed by competent authority who had been initially engaged in November 1983 whereas petitioner had been engaged in 1986.

14. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub-Division of Jawali and Nurpur in the year 1994. In the case in hand, evidence qua

petitioner revealed that he had been initially engaged in Suliali Sub-Division in December, 1986. This Suliali Sub Division was under Jassur Division out of which Jawali Sub Division was made in the year 1990 as is evident from Notification dated 21st July, 1994 Ex. RW1/C and Ex. RW1/D on record. These documents further show that Jassur Sub-Division cease to exist upon creation of Nurpur and Jawali Sub-Division meaning thereby that on creation of Jawali Sub-Division and Nurpur, Suliali Sub Division falling under the Nurpur Division got merged in Nurpur Sub-Division. Said Kusum Sharma is shown to have joined at Suliali Sub Division which consequently fell under Nurpur Sub-Division as discussed in foregoing paragraphs. It is evident from evidence on record that petitioner had been working under Suliali Sub-Division since 1986 as stated above but with the bifurcation of Divisions as stated above, it cannot be concluded that petitioner was disengaged in the month of December 1989 by respondent rather prior to creation of these two new Sub Divisions *i.e.* Nurpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This plea of respondent has although not been accepted by this court for want of issuance of notice or charge-sheet but it cannot be stated that petitioner had been disengaged by respondent by a verbal order. In view of foregoing plea of petitioner that Section 25-G was violated cannot be accepted and for similar reasons plea of petitioner that respondent had violated Section 25-H of the Act can also not be accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of forgoing discussions, issue no.1 is decided in negative holding that termination of service of petitioner by the respondent in December 1989 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3 :

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster-roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

16. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhagat Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another vs. Garib Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has

categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

18. As a sequel to my findings on foregoing issues No.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of June, 2018.

K .K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref. No. : 325/2016
Date of Institution : 26-05-2016
Date of Decision : 23-06-2018

Shri Bachittar Singh s/o Shri Phandolu Ram, r/o V.P.O. Mamoon Gurchal, Tehsil Nurpur,
District Kangra (H.P.) ...Petitioner.

Versus

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1. The Executive Engineer, Nurpur Division, H.P.P.W.D. Nurpur, Tehsil Nurpur, District Kangra (H.P.)
2. The Executive Engineer, Jawali Division, H.P.P.W.D. Jawali, District Kangra (H.P.)
...Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.D. Sharma, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Bachittar Singh s/o Sh. Phandolu Ram, r/o V.P.O. Mamoon Gurchal, Tehsil Nurpur, District Kangra, H.P. during November, 1991 by (i) the Executive Engineer, HPPWD Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer H.P.P.W.D. Jawali Division, Jawali, District Kangra, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute after more than 22 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 652 ½ days during May 1986 to November 1991 respectively and delay of more than 22 years in raising the industrial disputes, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of September 1985 in Nurpur Division, District Kangra, H.P. where he continuously worked till October 1991 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in October 1991 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national highway and had worked to the satisfaction of respondent and other superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent, he had made several verbal request to respondent by visiting its office as well as Sub-Division who was assured of reengagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for reengagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily wage basis by HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of "Last come First go". It is alleged that in utter disregard to the provisions of Section 25-G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer-in-Chief *vide* letter No. 3058/61 dated

18.1.2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1991 which clearly violates Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called "the Act" for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for reemployment/reengagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in September, 1985 in HPPWD Division Nurpur rather he was disengaged in October 1991. It has been categorically stated that petitioner was engaged as daily wager in Sub Division HPPWD Suliali falling under Jassur Division where he worked intermittently from May 1986 to November 1991 and thereafter left the work and did not approach the respondent/department. It is alleged that HPPWD Division Jassur was shifted to Jawali Division *vide* HP Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub Division was shifted to Nurpur Division. It has been emphatically denied that petitioner had completed 240 days rather claimed that petitioner merely worked till November, 1991 who did not complete 240 days in any calendar year as reflected in mandays chart. It is alleged that since Suliali Sub-Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in November 1991 did not arise. Moreover, petitioner is alleged to be gainfully employed as an agriculturist. Reiterating his stand, it has been contended that petitioner left the work of beldar in November 1991. However, denied that any resolution was pending before Assistant Registrar, H.P. State Administrative Tribunal for want of knowledge. In so far as Kusam Sharma is concerned, it has been categorically stated that Kusam Sharma was engaged as helper on daily wage basis by HPPWD Division Dalhousie in 1983 who worked intermittently till November 1998 when said Kusam Sharma made representation to Engineer-in-Chief HPPWD Shimla in December 1999 stipulating therein that she belonged to Suliali village as such permission be granted to work in HPPWD Division Nurpur and request was considered and allowed and adjusted against the post of daily waged Store Clerk. As such, said Kusam Sharma even after joining HPPWD Division Nurpur from Dalhousie Division continued to work with the respondent who was senior to the petitioner having joined service with the respondent/department in 1986. As such, there can be no violation of Section 25-H of the Industrial Disputes Act and for similar reasons, it was not required for respondent to have issued notice calling upon the petitioner for reemployment. It has categorically stated that no other junior persons has been retained or reemployed by the respondent besides maintained that only those workmen were regularized who continuously worked and fulfill the requisite criteria for regularization as per government policy however, denied that petitioner was terminated by the respondent. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21.7.1994 Ex. RW1/C, copy of office order dated 23.7.1994 Ex. RW1/D, copy of letter dated 18.1.2000 Ex. RW1/E, copy of mandays chart of Smt. Kusum Ex.

RW1/F and Ex. RW1/G, copy of letter dated 18.12.1999 Ex. RW1/H, copy of order dated 29.11.2010 Ex. RW1/I and closed evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 31.08.2017 for determination which are as under:

1. Whether termination of services of the petitioner by the respondents during November 1991 is/was illegal and unjustified as alleged? ...OPP.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ...OPR.
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? ...OPR.
5. Relief.
9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1	: No
Issue No. 2	: No
Issue No. 3	: No
Issue No. 4	: No
Relief	: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. The Petitioner has specifically stated on oath that he had completed 240 days having worked from September 1985 to October 1991 besides maintained to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and that his service had been terminated/disengaged verbally in the year 1991 in violation of law by respondent. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not worked from September 1985 but was engaged in May 1986 and he had worked intermittently upto November 1991. The testimony of RW1 corresponds with mandays chart Ex. RW1/B which reveals that petitioner had merely worked for 56 days in the year 1991. As such, from oral as well as documentary evidence on record, it cannot

be stated that petitioner had worked for 240 days. Be it stated that for applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days continuously in preceding one year before termination and testimony of petitioner is not substantiated from any corresponding evidence to this effect. As such, when petitioner had not completed 240 days, respondent was not required to issue any notice while disengaging him from service which is not the plea of respondent as it has pleaded that petitioner had abandoned the job.

12. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 1991. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. Ld. Dy. D.A. for the State has contended that even if the respondent has not been able to prove abandonment of job by respondent as required under law yet petitioner was not absolved from his accountability to prove to have worked for a minimum period of 240 days in preceding 12 months from termination. In view of the foregoing, it is held that respondent has not violated Section 25-F of the Act who was not required issue any notice or pay compensation as contended by petitioner.

13. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand, petitioner has emphasized enough that juniors were retained by respondent whereas petitioner had been disengaged despite availability of funds and work. In his affidavit petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the pleas so raised by petitioner, it would be relevant to go through evidence qua period when said Kusum Sharma had been engaged. Before proceeding further it may not be erroneous to mention here that petitioner has failed to prove seniority list of workmen of Suliali Sub-Division which was to be proved so as to establish violation of Section 25-G of the Act. Ld. Dy. D.A. for respondent has placed reliance upon mandays chart of Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub-Division No.1 HPPWD Banikhet as reflected in Ex. RW1/G. This document shows that Kusum Sharma had been engaged in **November 1983**. Said Kusum Sharma continued to work till November 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla *vide* application Ex. RW1/H requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub Division which was allowed as letter Ex. RW1/E dated 18.1.2000 revealed that one post of Store Clerk (work charged brought in regular cadre) had been allotted to HPPWD Nurpur Circle. Said Kusum Sharma was engaged in February 2000 under HPPWD as is evident from Ex. RW1/F who continued to work uninterruptedly till January 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged rather she is stated to be still working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February 2000 she cannot be stated to be junior to petitioner as her service had been placed at the disposal of Executive Engineer HPPWD Nurpur in pursuance to her request allowed by competent authority who had been initially engaged in November 1983 whereas petitioner had been engaged in 1986.

14. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub-Division of Jawali and Nurpur in the year 1994. In the case in hand, evidence qua petitioner revealed that he had been initially engaged in Suliali Sub-Division in February, 1987. This Suliali Sub Division was under Jassur Division out of which Jawali Sub-Division was made in

the year 1990 as is evident from Notification dated 21st July 1994 Ex. RW1/C and Ex. RW1/D on record. These documents further show that Jassur Sub-Division cease to exist upon creation of Nurpur and Jawali Sub Division meaning thereby that on creation of Jawali Sub Division and Nurpur, Suliali Sub Division falling under the Nurpur Division got merged in Nurpur Sub-Division. Said Kusum Sharma is shown to have joined at Suliali Sub-Division which consequently fell under Nurpur Sub-Division as discussed in foregoing paragraphs. It is evident from evidence on record that petitioner had been working under Suliali Sub-Division since 1986 as stated above but with the bifurcation of Divisions as stated above, it cannot be concluded that petitioner was disengaged in the month of November, 1991 by respondent rather prior to creation of these two new Sub Divisions *i.e.* Nurpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This plea of respondent has although not been accepted by this court for want of issuance of notice or charge- sheet but it cannot be stated that petitioner had been disengaged by respondent by a verbal order. In view of foregoing plea of petitioner that Section 25-G was violated cannot be accepted and for similar reasons plea of petitioner that respondent had violated Section 25-H of the Act can also not accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of forgoing discussions, issue no.1 is decided in negative holding that termination of service of petitioner by the respondent in November 1991 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3 :

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster-roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

16. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in **Bhatag Ram's case (2007 LHLJ 903)**. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors. 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of

limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

18. As a sequel to my findings on foregoing issues No.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of June, 2018.

K .K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref. No. : 268/2016
 Date of Institution : 04-05-2016
 Date of Decision : 23-06-2018

Shri Rajesh Kumar s/o Shri Nand Kishore, r/o Village Suliali, P.O. Suliali, Tehsil Nurpur,
 District Kangra (H.P.) ..Petitioner.

Versus

1. The Executive Engineer, Nurpur Division, H.P.P.W.D. Nurpur, Tehsil Nurpur,
 District Kangra (H.P.).

2. The Executive Engineer, Jawali Division, H.P.P.W.D. Jawali, District Kangra (H.P.)
...Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.D. Sharma, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Rajesh Kumar s/o Shri Nand Kishore, r/o Village Suliali, P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. during December 1987 by (I) the Executive Engineer HPPWD Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D. Jawali Division, Jawali, District Kangra, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute after more than 26 years, *vide* demand notice dated 24-11-2013 allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 82 days in year during February 1987 to December, 1987 respectively and delay of more than 26 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of August 1986 in Nurpur Division, District Kangra, H.P. where he continuously worked till September 1988 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in September 1988 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national highway and had worked to the satisfaction of respondent and other superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent, he had made several verbal request to respondent by visiting its office as well as Sub-Division who was assured of reengagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for reengagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily wage basis by HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of "Last come First go". It is alleged that in utter disregard to the provisions of Section 25-G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer-in-Chief *vide* letter No.3058/61 dated 18.1.2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1991 which clearly violates Section 25-G of the Industrial

Disputes Act, 1947 (hereinafter called "the Act" for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for reemployment/reengagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in August, 1986 in HPPWD Division Nurpur rather he was disengaged in September 1988. It has been categorically stated that petitioner was engaged as daily wager in Sub Division HPPWD Suliali falling under Jassur Division where he worked intermittently from September 1987 to December 1987 and thereafter left the work and did not approach the respondent/department. It is alleged that HPPWD Division Jassur was shifted to Jawali Division *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub Division was shifted to Nurpur Division. It has been emphatically denied that petitioner had completed 240 days rather claimed that petitioner merely worked till December 1987 who did not complete 240 days in any calendar year as reflected in mandays chart. It is alleged that since Suliali Sub Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in September, 1987 did not arise. Moreover, petitioner is alleged to be gainfully employed as an agriculturist. Reiterating his stand, it has been contended that petitioner left the work of beldar in September, 1987. However, denied that any resolution was pending before Assistant Registrar, HP State Administrative Tribunal for want of knowledge. In so far as Kusam Sharma is concerned, it has been categorically stated that Kusam Sharma was engaged as helper on daily wage basis by HPPWD Division Dalhousie in 1983 who worked intermittently till November, 1998 when said Kusam Sharma made representation to Engineer-in-Chief HPPWD Shimla in December, 1999 stipulating therein that she belonged to Suliali village as such permission be granted to work in HPPWD Division Nurpur and request was considered and allowed and adjusted against the post of daily waged Store Clerk. As such, said Kusam Sharma even after joining HPPWD Division Nurpur from Dalhousie Division continued to work with the respondent who was senior to the petitioner having joined service with the respondent/department in 1986. As such, there can be no violation of Section 25-H of the Industrial Disputes Act and for similar reasons, it was not required for respondent to have issued notice calling upon the petitioner for reemployment. It has categorically stated that no other junior persons has been retained or reemployed by the respondent besides maintained that only those workmen were regularized who continuously worked and fulfill the requisite criteria for regularization as per government policy however, denied that petitioner was terminated by the respondent. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21.7.1994 Ex. RW1/C, copy of office order dated 23.7.1994 Ex. RW1/D, copy of letter dated 18.1.2000 Ex. RW1/E, copy of mandays chart of Smt. Kusum Ex. RW1/F and Ex. RW1/G, copy of letter dated 18.12.1999 Ex. RW1/H, copy of order dated 29.11.2010 Ex. RW1/I and closed evidence.

7. I have heard the ld. Counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 01.09.2017 for determination which are as under:—

1. Whether termination of services of the petitioner by the respondents during December 1987 is/was illegal and unjustified as alleged? ...OPP.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ...OPR.
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? ...OPR.
5. Relief.
9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1: No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. The Petitioner has specifically stated on oath that he had completed 240 days having worked from August 1986 to September, 1988 besides maintained to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and that his service had been terminated/disengaged verbally in the year 1988 in violation of law by respondent. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not worked from August 1986 but was engaged in September 1987 and he had worked intermittently upto December 1987. The testimony of RW1 corresponds with mandays chart Ex. RW1/B which reveals that petitioner had merely worked for 82 days in the year 1987. As such, from oral as well as documentary evidence on record, it cannot be stated that petitioner had worked for 240 days. Be it stated that for applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days continuously in preceding one year before termination and testimony of petitioner is not substantiated from any

corresponding evidence to this effect. As such, when petitioner had not completed 240 days, respondent was not required to issue any notice while disengaging him from service which is not the plea of respondent as it has pleaded that petitioner had abandoned the job.

12. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 1987. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. Ld. Dy. D.A. for the State has contended that even if the respondent has not been able to prove abandonment of job by respondent as required under law yet petitioner was not absolved from his accountability to prove to have worked for a minimum period of 240 days in preceding 12 months from termination. In view of the foregoing, it is held that respondent has not violated Section 25-F of the Act who was not required issue any notice or pay compensation as contended by petitioner.

13. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand, petitioner has emphasized enough that juniors were retained by respondent whereas petitioner had been disengaged despite availability of funds and work. In his affidavit petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the pleas so raised by petitioner, it would be relevant to go through evidence qua period when said Kusum Sharma had been engaged. Before proceeding further it may not be erroneous to mention here that petitioner has failed to prove seniority list of workmen of Suliali Sub-Division which was to be proved so as to establish violation of Section 25-G of the Act. Ld. Dy. D.A. for respondent has placed reliance upon mandays chart of Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub Division No.1 HPPWD Banikhet as reflected in Ex. RW1/G. This document shows that Kusum Sharma had been engaged in **November 1983**. Said Kusum Sharma continued to work till November 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla *vide* application Ex. RW1/H requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub-Division which was allowed as letter Ex. RW1/E dated 18.1.2000 revealed that one post of Store Clerk (work charged brought in regular cadre) had been allotted to HPPWD Nurpur Circle. Said Kusum Sharma was engaged in February 2000 under HPPWD as is evident from Ex. RW1/F who continued to work uninterruptedly till January, 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged rather she is stated to be still working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February 2000 she cannot be stated to be junior to petitioner as her service had been placed at the disposal of Executive Engineer HPPWD Nurpur in pursuance to her request allowed by competent authority who had been initially engaged in November 1983 whereas petitioner had been engaged in 1987.

14. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub-Division of Jawali and Nurpur in the year 1994. In the case in hand, evidence qua petitioner revealed that he had been initially engaged in Suliali Sub-Division in September 1987. This Suliali Sub Division was under Jassur Division out of which Jawali Sub Division was made in the year 1990 as is evident from Notification dated 21st July 1994 Ex. RW1/C and Ex. RW1/D on record. These documents further show that Jassur Sub Division cease to exist upon creation of Nurpur and Jawali Sub Division meaning thereby that on creation of Jawali Sub Division and

Nurpur, Suliali Sub-Division falling under the Nurpur Division got merged in Nurpur Sub Division. Said Kusum Sharma is shown to have joined at Suliali Sub-Division which consequently fell under Nurpur Sub-Division as discussed in foregoing paragraphs. It is evident from evidence on record that petitioner had been working under Suliali Sub-Division since 1987 as stated above but with the bifurcation of Divisions as stated above, it cannot be concluded that petitioner was disengaged in the month of December, 1987 by respondent rather prior to creation of these two new Sub-Divisions *i.e.* Nurpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This plea of respondent has although not been accepted by this court for want of issuance of notice or charge-sheet but it cannot be stated that petitioner had been disengaged by respondent by a verbal order. In view of foregoing plea of petitioner that Section 25-G was violated cannot be accepted and for similar reasons plea of petitioner that respondent had violated Section 25-H of the Act can also not accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of forgoing discussions, issue No.1 is decided in negative holding that termination of service of petitioner by the respondent in December 1987 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3 :

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster-roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

16. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors., AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-**

Processing Society Limited and Another (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief:

18. As a sequel to my findings on foregoing issues No.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of June, 2018.

K .K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref. No. : 257/2016
 Date of Institution : 03-05-2016
 Date of Decision : 23-06-2018

Shri Joginder Singh s/o Shri Saraf Singh, r/o Village Samula, P.O. Sadwan, Tehsil Nurpur,
 District Kangra (H.P.) ...Petitioner.

Versus

1. The Executive Engineer, Nurpur, Division, H.P.P.W.D. Nurpur, Tehsil Nurpur,
 District Kangra (H.P.).

2. The Executive Engineer, Jawali Division, H.P.P.W.D. Jawali, District Kangra, H.P.
 ...Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.D. Sharma, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Joginder Singh s/o Shri Saraf Singh, r/o Village Samula, P.O. Sadwan, Tehsil Nurpur, District Kangra, H.P. by (i) the Executive Engineer, HPPWD Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer H.P.P.W.D. Jawali Division, Jawali, District Kangra, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute *vide* demand notice dated 24-11-2013 after more than 26 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 74 days in year during February 1987 to October 1987 respectively and delay of more than 26 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of September 1984 in Nurpur Division, District Kangra, H.P. where he continuously worked till October 1990 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in October, 1990 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national highway and had worked to the satisfaction of respondent and other superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent, he had made several verbal request to respondent by visiting its office as well as Sub-Division who was assured of reengagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for re-engagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily wage basis by HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of "Last come First go". It is alleged that in utter disregard to the provisions of Section 25-G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer-in-Chief *vide* letter No.3058/61 dated 18.1.2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1990 which clearly violates Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called "the Act" for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in

preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for reemployment/reengagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in September 1984 in HPPWD Division Nurpur rather he was disengaged in October 1990. It has been categorically stated that petitioner was engaged as daily wager in Sub Division HPPWD Suliali falling under Jassur Division where he worked intermittently from February 1987 to August 1987 and thereafter left the work and did not approach the respondent/department. It is alleged that HPPWD Division Jassur was shifted to Jawali Division *vide* H.P. Government Notification No.PBW-(A)-A (I) 17/1994 dated 21st July, 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub-Division was shifted to Nurpur Division. It has been emphatically denied that petitioner had completed 240 days rather claimed that petitioner merely worked till August 1987 who did not complete 240 days in any calendar year as reflected in mandays chart. It is alleged that since Suliali Sub Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in August, 1987 did not arise. Moreover, petitioner is alleged to be gainfully employed as an agriculturist. Reiterating his stand, it has been contended that petitioner left the work of beldar in August 1987. However, denied that any resolution was pending before Assistant Registrar, HP State Administrative Tribunal for want of knowledge. In so far as Kusam Sharma is concerned, it has been categorically stated that Kusam Sharma was engaged as helper on daily wage basis by HPPWD Division Dalhousie in 1983 who worked intermittently till November 1998 when said Kusam Sharma made representation to Engineer-in-Chief HPPWD Shimla in December 1999 stipulating therein that she belonged to Suliali village as such permission be granted to work in HPPWD Division Nurpur and request was considered and allowed and adjusted against the post of daily waged Store Clerk. As such, said Kusam Sharma even after joining HPPWD Division Nurpur from Dalhousie Division continued to work with the respondent who was senior to the petitioner having joined service with the respondent/department in 1986. As such, there can be no violation of Section 25-H of the Industrial Disputes Act and for similar reasons, it was not required for respondent to have issued notice calling upon the petitioner for reemployment. It has categorically stated that no other junior persons has been retained or reemployed by the respondent besides maintained that only those workmen were regularized who continuously worked and fulfill the requisite criteria for regularization as per government policy however, denied that petitioner was terminated by the respondent. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21.7.1994 Ex. RW1/C, copy of office order dated 23.7.1994 Ex. RW1/D, copy of letter dated 18.1.2000 Ex. RW1/E, copy of mandays chart of Smt. Kusum Ex. RW1/F and Ex. RW1/G, copy of letter dated 18.12.1999 Ex. RW1/H, copy of order dated 29.11.2010 Ex. RW1/I and closed evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 31.08.2017 for determination which are as under :—

1. Whether termination of services of the petitioner by the respondents during August 1987 is/was illegal and unjustified as alleged? ...OPP.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? ..OPR.
5. Relief.
9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. The Petitioner has specifically stated on oath that he had completed 240 days having worked from September 1984 to October 1990 besides maintained to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and that his service had been terminated/disengaged verbally in the year 1990 in violation of law by respondent. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not worked from August, 1986 but was engaged in February 1987 and he had worked intermittently upto August 1987. The testimony of RW1 corresponds with mandays chart Ex. RW1/B which reveals that petitioner had merely worked for 74 days in the year 1987. As such, from oral as well as documentary evidence on record, it cannot be stated that petitioner had worked for 240 days. Be it stated that for applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days continuously in preceding one year before termination and testimony of petitioner is not substantiated from any corresponding evidence to this effect. As such, when petitioner had not completed 240 days, respondent was not required to issue any notice while disengaging him from service which is not the plea of respondent as it has pleaded that petitioner had abandoned the job.

12. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 1987. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. Ld. Dy. D.A. for the State has contended that even if the respondent has not been able to prove abandonment of job by respondent as required under law yet petitioner was not absolved from his accountability to prove to have worked for a minimum period of 240 days in preceding 12 months from termination. In view of the foregoing, it is held that respondent has not violated Section 25-F of the Act who was not required issue any notice or pay compensation as contended by petitioner.

13. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand, petitioner has emphasized enough that juniors were retained by respondent whereas petitioner had been disengaged despite availability of funds and work. In his affidavit petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the pleas so raised by petitioner, it would be relevant to go through evidence qua period when said Kusum Sharma had been engaged. Before proceeding further it may not be erroneous to mention here that petitioner has failed to prove seniority list of workmen of Suliali Sub-Division which was to be proved so as to establish violation of Section 25-G of the Act. Ld. Dy. D.A. for respondent has placed reliance upon mandays chart of Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub Division No.1 HPPWD Banikhet as reflected in Ex. RW1/G. This document shows that Kusum Sharma had been engaged in **November 1983**. Said Kusum Sharma continued to work till November, 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla *vide* application Ex. RW1/H requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub-Division which was allowed as letter Ex. RW1/E dated 18.1.2000 revealed that one post of Store Clerk (work charged brought in regular cadre) had been allotted to HPPWD Nurpur Circle. Said Kusum Sharma was engaged in February 2000 under HPPWD as is evident from Ex. RW1/F who continued to work uninterruptedly till January 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged rather she is stated to be still working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February, 2000 she cannot be stated to be junior to petitioner as her service had been placed at the disposal of Executive Engineer HPPWD Nurpur in pursuance to her request allowed by competent authority who had been initially engaged in November, 1983 whereas petitioner had been engaged in 1987.

14. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub-Division of Jawali and Nurpur in the year 1994. In the case in hand, evidence qua petitioner revealed that he had been initially engaged in Suliali Sub Division in September, 1987. This Suliali Sub Division was under Jassur Division out of which Jawali Sub-Division was made in the year 1990 as is evident from Notification dated 21st July 1994 Ex. RW1/C and Ex. RW1/D on record. These documents further show that Jassur Sub-Division cease to exist upon creation of Nurpur and Jawali Sub Division meaning thereby that on creation of Jawali Sub-Division and Nurpur, Suliali Sub-Division falling under the Nurpur Division got merged in Nurpur Sub-Division. Said Kusum Sharma is shown to have joined at Suliali Sub-Division which consequently fell under Nurpur Sub-Division as discussed in foregoing paragraphs. It is evident from evidence on record that petitioner had been working under Suliali Sub-Division since 1987 as stated above

but with the bifurcation of Divisions as stated above, it cannot be concluded that petitioner was disengaged in the month of December 1987 by respondent rather prior to creation of these two new Sub Divisions *i.e.* Nurpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This plea of respondent has although not been accepted by this court for want of issuance of notice or charge-sheet but it cannot be stated that petitioner had been disengaged by respondent by a verbal order. In view of foregoing plea of petitioner that Section 25-G was violated cannot be accepted and for similar reasons plea of petitioner that respondent had violated Section 25-H of the Act can also not be accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of forgoing discussions, issue no.1 is decided in negative holding that termination of service of petitioner by the respondent in August, 1987 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3 :

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster-roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

16. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhagat Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another vs. Garib Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors., AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

18. As a sequel to my findings on foregoing issues No.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of June, 2018.

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 288/2016
 Date of Institution : 04-05-2016
 Date of Decision : 23-06-2018

Shri Rattan Singh s/o Shri Baldev Singh, r/o Village Hatli, P.O. Suliali, Tehsil Nurpur, District Kangra (H.P.) ...Petitioner.

Versus

1. The Executive Engineer, Nurpur Division, H.P.P.W.D. Nurpur, Tehsil Nurpur, District Kangra (H.P.).

2. The Executive Engineer, Jawali Division, H.P.P.W.D. Jawali, District Kangra, H.P. ...Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.D. Sharma, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether alleged termination of services of Shri Rattan Singh s/o Shri Baldev Singh, r/o Village Hathi, P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. dring February, 1987 by (i) the Executive Engineer, H.P.P.W.D. Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D. Jawali Division, Jawali, District Kangra, H.P., who has worked as beldar on daily wages basis and has raised his industrial dispute *vide* demand notice dated 24-11-2013 after more than 26 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 14 days in year during February 1987 and delay of more than 26 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of September 1985 in Nurpur Division, District Kangra, H.P. where he continuously worked till October 1987 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in October 1987 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national highway and had worked to the satisfaction of respondent and other superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent, he had made several verbal request to respondent by visiting its office as well as Sub-Division who was assured of reengagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for reengagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily wage basis by HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of "Last come First go". It is alleged that in utter disregard to the provisions of Section 25-G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer-in-Chief *vide* letter No.3058/61 dated 18.1.2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1990 which clearly violates Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called "the Act" for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G

of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for reemployment/reengagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in September 1985 in HPPWD Division Nurpur rather he was disengaged in October 1987. It has been categorically stated that petitioner was engaged as daily wager in Sub-Division HPPWD Suliali falling under Jassur Division where he worked intermittently in February 1987 and thereafter left the work and did not approach the respondent/department. It is alleged that HPPWD Division Jassur was shifted to Jawali Division vide HP Government Notification No.PBW-(A)-A (I) 17/1994 dated 21st July 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub-Division was shifted to Nurpur Division. It has been emphatically denied that petitioner had completed 240 days rather claimed that petitioner merely worked till February, 1987 who did not complete 240 days in any calendar year as reflected in mandays chart. It is alleged that since Suliali Sub-Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in February, 1987 did not arise. Moreover, petitioner is alleged to be gainfully employed as an agriculturist. Reiterating his stand, it has been contended that petitioner left the work of beldar in February 1987. However, denied that any resolution was pending before Assistant Registrar, HP State Administrative Tribunal for want of knowledge. In so far as Kusam Sharma is concerned, it has been categorically stated that Kusam Sharma was engaged as helper on daily wage basis by HPPWD Division Dalhousie in 1983 who worked intermittently till November 1998 when said Kusam Sharma made representation to Engineer-in-Chief HPPWD Shimla in December, 1999 stipulating therein that she belonged to Suliali village as such permission be granted to work in HPPWD Division Nurpur and request was considered and allowed and adjusted against the post of daily waged Store Clerk. As such, said Kusam Sharma even after joining HPPWD Division Nurpur from Dalhousie Division continued to work with the respondent who was senior to the petitioner having joined service with the respondent/department in 1986. As such, there can be no violation of Section 25-H of the Industrial Disputes Act and for similar reasons, it was not required for respondent to have issued notice calling upon the petitioner for reemployment. It has categorically stated that no other junior persons has been retained or reemployed by the respondent besides maintained that only those workmen were regularized who continuously worked and fulfill the requisite criteria for regularization as per government policy however, denied that petitioner was terminated by the respondent. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21.7.1994 Ex. RW1/C, copy of office order dated 23.7.1994 Ex. RW1/D, copy of letter dated 18.1.2000 Ex. RW1/E, copy of mandays chart of Smt. Kusum Ex. RW1/F and Ex. RW1/G, copy of letter dated 18.12.1999 Ex. RW1/H, copy of order dated 29.11.2010 Ex. RW1/I and closed evidence.

7. I have heard the Id. counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 31.08.2017 for determination which are as under:—

1. Whether termination of services of the petitioner by the respondents during February 1987 is/was illegal and unjustified as alleged? ...OPP.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ...OPR.
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? ...OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4: No

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. The Petitioner has specifically stated on oath that he had completed 240 days having worked from September 1985 to October, 1987 besides maintained to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and that his service had been terminated/disengaged verbally in the year 1987 in violation of law by respondent. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not worked from September 1985 but was engaged in February, 1987 and he had worked intermittently upto February 1987. The testimony of RW1 corresponds with mandays chart Ex. RW1/B which reveals that petitioner had merely worked for 14 days in the year 1987. As such, from oral as well as documentary evidence on record, it cannot be stated that petitioner had worked for 240 days. Be it stated that for applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days continuously in preceding one year before termination and testimony of petitioner is not substantiated from any corresponding evidence to this effect. As such, when petitioner had not completed 240 days, respondent was not required to issue any notice while disengaging him from service which is not the plea of respondent as it has pleaded that petitioner had abandoned the job.

12. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex.

RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 1987. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. Ld. Dy. D.A. for the State has contended that even if the respondent has not been able to prove abandonment of job by respondent as required under law yet petitioner was not absolved from his accountability to prove to have worked for a minimum period of 240 days in preceding 12 months from termination. In view of the foregoing, it is held that respondent has not violated Section 25-F of the Act who was not required issue any notice or pay compensation as contended by petitioner.

13. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand, petitioner has emphasized enough that juniors were retained by respondent whereas petitioner had been disengaged despite availability of funds and work. In his affidavit petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the pleas so raised by petitioner, it would be relevant to go through evidence qua period when said Kusum Sharma had been engaged. Before proceeding further it may not be erroneous to mention here that petitioner has failed to prove seniority list of workmen of Suliali Sub Division which was to be proved so as to establish violation of Section 25-G of the Act. Ld. Dy. D.A. for respondent has placed reliance upon mandays chart of Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub-Division No.1 HPPWD Banikhet as reflected in Ex. RW1/G. This document shows that Kusum Sharma had been engaged in **November 1983**. Said Kusum Sharma continued to work till November, 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla *vide* application Ex. RW1/H requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub-Division which was allowed as letter Ex. RW1/E dated 18.1.2000 revealed that one post of Store Clerk (work charged brought in regular cadre) had been allotted to HPPWD Nurpur Circle. Said Kusum Sharma was engaged in February 2000 under HPPWD as is evident from Ex. RW1/F who continued to work uninterruptedly till January 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged rather she is stated to be still working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February 2000 she cannot be stated to be junior to petitioner as her service had been placed at the disposal of Executive Engineer HPPWD Nurpur in pursuance to her request allowed by competent authority who had been initially engaged in November 1983 whereas petitioner had been engaged in 1987.

14. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub-Division of Jawali and Nurpur in the year 1994. In the case in hand, evidence qua petitioner revealed that he had been initially engaged in Suliali Sub-Division in September, 1987. This Suliali Sub-Division was under Jassur Division out of which Jawali Sub Division was made in the year 1990 as is evident from Notification dated 21st July 1994 Ex. RW1/C and Ex. RW1/D on record. These documents further show that Jassur Sub-Division ceased to exist upon creation of Nurpur and Jawali Sub Division meaning thereby that on creation of Jawali Sub Division and Nurpur, Suliali Sub-Division falling under the Nurpur Division got merged in Nurpur Sub-Division. Said Kusum Sharma is shown to have joined at Suliali Sub Division which consequently fell under Nurpur Sub Division as discussed in foregoing paragraphs. It is evident from evidence on record that petitioner had been working under Suliali Sub Division since 1987 as stated above but with the bifurcation of Divisions as stated above, it cannot be concluded that petitioner was disengaged in the month of February, 1987 by respondent rather prior to creation of these two new Sub Divisions i.e. Nurpur and Jawali, petitioner himself was not in job

as he had left the job who did not report for duty. This plea of respondent has although not been accepted by this court for want of issuance of notice or charge-sheet but it cannot be stated that petitioner had been disengaged by respondent by a verbal order. In view of foregoing plea of petitioner that Section 25-G was violated cannot be accepted and for similar reasons plea of petitioner that respondent had violated Section 25-H of the Act can also not accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of forgoing discussions, issue No. 1 is decided in negative holding that termination of service of petitioner by the respondent in February 1987 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3 :

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster-roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

16. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another vs. Garib Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr., 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors., AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of

fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief:

18. As a sequel to my findings on foregoing issues No.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of June, 2018.

K .K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref. No. : 412/2016

Date of Institution : 27-06-2016

Date of Decision : 23-06-2018

Shri Yash Pal s/o Shri Ranjit Singh, r/o Village Hatli, P.O. Suliali, Tehsil Nurpur, District Kangra (H.P.)
...Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Nurpur, Tehsil Nurpur, District Kangra (H.P.)
2. The Executive Engineer, H.P.P.W.D. Jawali Division, Jawali, District Kangra (H.P.)

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.D. Sharma, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether alleged termination of the services of Shri Yash Pal s/o Shri Ranjit Singh, r/o Village Hatli, P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. during September 1987 by (i) the Executive Engineer, Nurpur Division, H.P.P.W.D. Nurpur, District Kangra, H.P. (ii) the Executive Engineer, Jawali Division, H.P.P.W.D. Jawali, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by workman, is legal and justified; whereas he has raised the industrial dispute *vide* demand notice dated 15-12-2011 after lapse of more than 24 years. If not, keeping in view delay of more than 24 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of August 1985 in Suliali Sub-Division HPPWD falling under HPPWD Division Nurpur, District Kangra, H.P. where he continuously worked till September, 1987 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in September 1988 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national highway and had worked to the satisfaction of respondent and other superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent, he had made several verbal request to respondent by visiting its office as well as office at Sub-Division Suliali who was assured of reengagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for reengagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily wage basis by HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of "Last come First go". It is alleged that in utter disregard to the provisions of Section 25-G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer-in-Chief *vide* letter No.3058/61 dated 18.1.2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1987 which clearly violates Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called "the Act" for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for reemployment/reengagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability and petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in August, 1985 in HPPWD Division Nurpur and was disengaged in September, 1987. It is alleged that HPPWD Division Jassur was shifted to Jawali Division *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub-Division was shifted to Nurpur Division. It has been emphatically denied that petitioner was ever engaged by the respondent and the question of completion of 240 days did not arise. It is alleged that since Suliali Sub-Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in September 1987 did not arise. Moreover, petitioner has alleged to gainfully employed as an agriculturist. However, denied that any resolution was pending before Assistant Registrar, H.P. State Administrative Tribunal for want of knowledge. It is further stated that petitioner was never engaged by the respondent and violation of any provisions of the Industrial Disputes Act does not arise. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21.7.1994 Ex. RW1/B, copy of office order dated 23.7.1994 Ex. RW1/C, copy of order dated 29.11.2010 Ex. RW1/D, copy of letter dated 18.12.1999 Ex. RW1/E, copy of letter dated 18.1.2000 Ex. RW1/F and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 31.08.2017 for determination which are as under :—

1. Whether termination of services of the petitioner by the respondents during September, 1987 is/was illegal and unjustified as alleged? ...OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ...OPR.
4. Whether the claim petition is bad on the ground of delay and laches as alleged? ...OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1: No

Issue No. 2 : No

Issue No. 3 : Yes

Issue No. 4 : No

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS*Issues No. 1 and 2 :*

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that petitioner had neither proved mandays chart nor produced seniority list in absence of which it would be unsafe to hold that respondent had violated Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. Be it stated here that there is only oral evidence on record adduced by the parties in support of their respective contentions and that there is no documentary evidence led by either parties to claim petition. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. Be it stated that petitioner has specifically alleged that he had completed 240 days having worked from August, 1985 to September 1987. He has also stated to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari besides maintained that his service had been terminated/disengaged verbally in the year 1987 by respondent despite availability of work and funds. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not at all worked with the respondent. As such, from evidence on record, it cannot be stated that petitioner had worked for 240 days. For the applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days and his testimony was required to be substantiated from evidence on record. As such, when petitioner has not proved to have factually worked with respondent question of completing 240 days did not arise and thus respondent was not required to issue any notice while disengaging him from service.

12. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand petitioner has emphasized enough that juniors were retained whereas petitioner had been disengaged. In his affidavit Ex. PW1/A petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the pleas so raised by petitioner, it would be relevant to go through evidence qua period when said Kusum Sharma had been engaged. Ld. Dy. D.A. for respondent has contended that Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub-Division No.1 HPPWD Banikhet as reflected in affidavit of RW1. Be it stated that Kusum Sharma had been engaged in November 1983 by HPPWD Banikhet Division. Said Kusum Sharma continued to work till November, 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla *vide* petitioner's application requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub-Division which was allowed in her favour on 18.1.2000 RW1 further stated that one post of Store Clerk (work charged brought in regular cadre) had been allotted to Circle at HPPWD Nurpur. Said Kusum Sharma was engaged in February 2000 as is evident from Ex. RW1/A affidavit of Inder Singh Uttam, Executive Engineer, HPPWD, B&R Division Nurpur and she continued to work uninterruptedly till January 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged at any point of time rather she is stated to be still working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February 2000 she cannot be stated to be junior the petitioner as her service had been placed at the disposal of Executive Engineer, HPPWD Nurpur in pursuance to her request allowed by competent authority and that she had been initially engaged in November 1983 and transferred to Suliali Sub-Division as has been admitted by RW1 in cross-examination.

13. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub-Division at Jwali and Nurpur in the year 1994. In the case in hand evidence qua petitioner revealed that he had been engaged in Suliali Sub-Division in August, 1985 wherefrom he was allegedly terminated in the same year. This suliali Sub Division was under Jassur Division out of which Jawali Sub-Division was made in the year 1999 as per Notification dated 21st July 1994 as shown in affidavit Ex. RW1/A on record. RW1 further stated that Jassur Division cease to exist consequent upon creation of Nurpur and Jawali Sub-Division meaning thereby that on creation of Jawali Sub-Division and Nurpur, Suliali Sub-Division had fallen under the Nurpur Division. Said Kusum Sharma is shown to have joined at Suliali Sub Division on transfer as deposed by RW1 which consequently fell under Nurpur. It is evident from evidence on record that petitioner had been working under Suliali Sub-Division but with the bifurcation of Divisions, it cannot be concluded that petitioner was disengaged in the month of September 1988 by respondent rather prior to creation of these two new Divisions *i.e.* Nurpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This plea of respondent has although not been accepted but it cannot be also stated that petitioner had been disengaged by respondent by a verbal order as claimed by petitioner. Similarly, no written representation was made to respondent as alleged in claim petition has been brought in evidence. In view of foregoing plea of petitioner that Section 25-G was violated cannot be accepted moreso when there is no iota of evidence qua engagement of petitioner by respondent even for a single day and for similar reasons, plea of petitioner that respondent had violated Section 25-H of the Act can also not be accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of forgoing discussions, Issue No. 1 is decided in negative holding that termination of service of petitioner by the respondent in September 1987 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3 :

14. Since the petitioner has failed to prove that he ever worked with the respondent as beldar and thus there existed no relationship of employer and workman and therefore respondent cannot be stated to have violated provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act and on this score petition is held to be not maintainable. Issue in question is answered in negative in favour of respondent and against petitioner.

Issue No. 4 :

15. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhagat Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another vs. Garib Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same

is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

16. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

17. As a sequel to my findings on foregoing issues No. 1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of June, 2018.

K . K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.

Ref. No. : 403/2016

Date of Institution : 27-06-2016

Date of Decision : 23-06-2018

Shri Ramesh Chand s/o Shri Khushia Ram, r/o VPO Suliali, Tehsil Nurpur, District Kangra (H.P.) ...Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Jawali Division, Jawali, District Kangra, H.P. ...Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.D. Sharma, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Ramesh Chand s/o Shri Khushia Ram, r/o V.P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. during 1988 by (i) the Executive Engineer, H.P.P.W.D. Nurpur Division, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D. Jawali Division District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas he has raised the dispute *vide* demand notice dated 24/11/2013 after lapse of 25 years. If not, keeping in view delay of more than 25 years in raising industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of August 1986 in Suliali Sub-Division HPPWD falling under HPPWD Division Nurpur, District Kangra, H.P. where he continuously worked till September 1988 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in September 1988 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national highway and had worked to the satisfaction of respondent and other superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent, he had made several verbal request to respondent by visiting its office as well as office at Sub-Division Suliali who was assured of reengagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for reengagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily wage basis by HPPWD constituted one unit and procedure for retrenchment which involved

applicability of principle of "Last come First go". It is alleged that in utter disregard to the provisions of Section 25-G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusum Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer-in-Chief *vide* letter No. 3058/61 dated 18.1.2000. It is claimed that said Kusum Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1988 which clearly violates Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called "the Act" for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for reemployment/reengagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability and petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in August 1986 in HPPWD Division Nurpur and was disengaged in September 1988. It is alleged that HPPWD Division Jassur was shifted to Jawali Division *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub-Division was shifted to Nurpur Division. It has been emphatically denied that petitioner was ever engaged by the respondent and the question of completion of 240 days did not arise. It is alleged that since Suliali Sub-Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in September 1988 did not arise. Moreover, petitioner has alleged to gainfully employed as an agriculturist. However, denied that any resolution was pending before Assistant Registrar, H.P. State Administrative Tribunal for want of knowledge. It is further stated that petitioner was never engaged by the respondent and violation of any provisions of the Industrial Disputes Act does not arise. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21.7.1994 Ex. RW1/B, copy of office order dated 23.7.1994 Ex. RW1/C, copy of order dated 29.11.2010 Ex. RW1/D, copy of letter dated 18.12.1999 Ex. RW1/E, copy of letter dated 18.1.2000 Ex. RW1/F and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 31.08.2017 for determination which are as under:—

1. Whether termination of services of the petitioner by the respondents during year 1988 is/was illegal and unjustified as alleged? ...OPP.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.

3. Whether the claim petition is not maintainable in the present form as alleged? ...OPR.
4. Whether the claim petition is bad on the ground of delay and laches as alleged?
...OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3: Yes

Issue No. 4 : No

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that petitioner had neither proved mandays chart nor produced seniority list in absence of which it would be unsafe to hold that respondent had violated Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. Be it stated here that there is only oral evidence on record adduced by the parties in support of their respective contentions and that there is no documentary evidence led by either parties to claim petition. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. Be it stated that petitioner has specifically alleged that he had completed 240 days having worked from August 1986 to September, 1988. He has also stated to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari besides maintained that his service had been terminated/disengaged verbally in the year 1988 by respondent despite availability of work and funds. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not at all worked with the respondent. As such, from evidence on record, it cannot be stated that petitioner had worked for 240 days. For the applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days and his testimony was required to be substantiated from evidence on record. As such, when petitioner has not proved to have factually worked with respondent question of completing 240 days did not arise and thus respondent was not required to issue any notice while disengaging him from service.

12. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand petitioner has emphasized enough that juniors were retained whereas petitioner had been disengaged. In his affidavit Ex. PW1/A petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the pleas so raised by petitioner, it would be relevant to go through evidence qua period when said Kusum Sharma had been engaged. Ld. Dy. D.A. for respondent has contended that Kusum Sharma d/o Daulat Ram who was working in

Banikhet Sub-Division No.1 HPPWD Banikhet as reflected in affidavit of RW1. Be it stated that Kusum Sharma had been engaged in November 1983 by HPPWD Banikhet Division. Said Kusum Sharma continued to work till November, 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla *vide* petitioner's application requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub-Division which was allowed in her favour on 18.1.2000 RW1 further stated that one post of Store Clerk (work charged brought in regular cadre) had been allotted to Circle at HPPWD Nurpur. Said Kusum Sharma was engaged in February 2000 as is evident from Ex. RW1/A affidavit of Inder Singh Uttam, Executive Engineer, HPPWD, B&R Division Nurpur and she continued to work uninterruptedly till January 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged at any point of time rather she is stated to be still working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February, 2000 she cannot be stated to be junior the petitioner as her service had been placed at the disposal of Executive Engineer, HPPWD Nurpur in pursuance to her request allowed by competent authority and that she had been initially engaged in November 1983 and transferred to Suliali Sub Division as has been admitted by RW1 in cross-examination.

13. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub-Division at Jawali and Nurpur in the year 1994. In the case in hand evidence qua petitioner revealed that he had been engaged in Suliali Sub-Division in August, 1986 wherefrom he was allegedly terminated in the same year. This Suliali Sub Division was under Jassur Division out of which Jawali Sub-Division was made in the year 1999 as per Notification dated 21st July 1994 as shown in affidavit Ex. RW1/A on record. RW1 further stated that Jassur Division cease to exist consequent upon creation of Nurpur and Jawali Sub-Division meaning thereby that on creation of Jawali Sub-Division and Nurpur, Suliali Sub Division had fallen under the Nurpur Division. Said Kusum Sharma is shown to have joined at Suliali Sub Division on transfer as deposed by RW1 which consequently fell under Nurpur. It is evident from evidence on record that petitioner had been working under Suliali Sub Division but with the bifurcation of Divisions, it cannot be concluded that petitioner was disengaged in the month of September, 1988 by respondent rather prior to creation of these two new Divisions *i.e.* Nurpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This plea of respondent has although not been accepted but it cannot be also stated that petitioner had been disengaged by respondent by a verbal order as claimed by petitioner. Similarly, no written representation was made to respondent as alleged in claim petition has been brought in evidence. In view of foregoing plea of petitioner that Section 25-G was violated cannot be accepted moreso when there is no iota of evidence qua engagement of petitioner by respondent even for a single day and for similar reasons, plea of petitioner that respondent had violated Section 25-H of the Act can also not be accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of forgoing discussions, issue No.1 is decided in negative holding that termination of service of petitioner by the respondent in September, 1988 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3:

14. Since the petitioner has failed to prove that he ever worked with the respondent as beldar and thus there existed no relationship of employer and workman and therefore respondent cannot be stated to have violated provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act and on this score petition is held to be not maintainable. Issue in question is answered in negative in favour of respondent and against petitioner.

Issue No. 4 :

15. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors., AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

16. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

17. As a sequel to my findings on foregoing issues No.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of June, 2018.

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref . No. : 406/2016
 Date of Institution : 27-06-2016
 Date of Decision : 23-06-2018

Shri Gulzari Lal *alias* Yashpal s/o Shri Bihari Lal, r/o Village Loharpura, Tehsil Suliali, District Kangra (H.P.)*Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D. Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Jawali Division, Jawali, District Kangra, H.P.*Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.D. Sharma, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of the services of Shri Gulzari *alias* Yashpal s/o Shri Bihari Lal, r/o Village Loharpura, Tehsil Suliali, District Kangra, H.P. during October 1990 by (i) the Executive Engineer, Nurpur Division, H.P.P.W.D. Nurpur, District Kangra, H.P. (ii) the Executive Engineer, Jawali Division, H.P.P.W.D. Jawali, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by workman, is legal and justified; whereas he has raised industrial dispute *vide* demand notice dated 09-04-2014 after lapse of more than 23 years. If not, keeping in view delay of more than 23 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.
3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of April 1988 in Suliali Sub-Division HPPWD falling under HPPWD Division Nurpur, District Kangra, H.P. where he continuously worked till October 1990 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in October 1990 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national highway and had worked to the satisfaction of respondent and other superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent, he had made several verbal request to respondent by visiting its office as well as office at Sub-

Division Suliali who was assured of reengagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for reengagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily wage basis by HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of 'Last come First go'. It is alleged that in utter disregard to the provisions of Section 25-G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer-in-Chief *vide* letter No.3058/61 dated 18.1.2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1990 which clearly violates Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for reemployment/reengagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability and petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in April 1988 in HPPWD Division Nurpur and was disengaged in October 1990. It is alleged that HPPWD Division Jassur was shifted to Jawali Division *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub Division was shifted to Nurpur Division. It has been emphatically denied that petitioner was ever engaged by the respondent and the question of completion of 240 days did not arise. It is alleged that since Suliali Sub-Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in October 1990 did not arise. Moreover, petitioner has alleged to gainfully employed as an agriculturist. However, denied that any resolution was pending before Assistant Registrar, H.P. State Administrative Tribunal for want of knowledge. It is further stated that petitioner was never engaged by the respondent and violation of any provisions of the Industrial Disputes Act does not arise. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21.7.1994 Ex. RW1/B, copy of office order dated 23.7.1994 Ex. RW1/C, copy of order dated 29.11.2010 Ex. RW1/D, copy of letter dated 18.12.1999 Ex. RW1/E, copy of letter dated 18.1.2000 Ex. RW1/F and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 31.08.2017 for determination which are as under:

1. Whether termination of services of the petitioner by the respondents during October 1990 is/was illegal and unjustified as alleged? ...OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ...OPR.
4. Whether the claim petition is bad on the ground of delay and laches as alleged? ...OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : Yes

Issue No. 4 : No

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that petitioner had neither proved mandays chart nor produced seniority list in absence of which it would be unsafe to hold that respondent had violated Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. Be it stated here that there is only oral evidence on record adduced by the parties in support of their respective contentions and that there is no documentary evidence led by either parties to claim petition. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. Be it stated that petitioner has specifically alleged that he had completed 240 days having worked from April 1988 to October 1990. He has also stated to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari besides maintained that his service had been terminated/disengaged verbally in the year 1990 by respondent despite availability of work and funds. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not at all worked with the respondent. As such, from evidence on record, it cannot be stated that petitioner had worked for 240 days. For the applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days and his testimony was required to be substantiated from evidence on record. As such, when petitioner has not proved to have factually worked with respondent question of completing 240 days did not arise and thus respondent was not required to issue any notice while disengaging him from service.

12. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand petitioner has

emphasized enough that juniors were retained whereas petitioner had been disengaged. In his affidavit Ex. PW1/A petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the pleas so raised by petitioner, it would be relevant to go through evidence qua period when said Kusum Sharma had been engaged. Ld. Dy. D.A. for respondent has contended that Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub Division No.1 HPPWD Banikhet as reflected in affidavit of RW1. Be it stated that Kusum Sharma had been engaged in November 1983 by HPPWD Banikhet Division. Said Kusum Sharma continued to work till November 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla *vide* petitioner's application requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub Division which was allowed in her favour on 18.1.2000 RW1 further stated that one post of Store Clerk (work charged brought in regular cadre) had been allotted to Circle at HPPWD Nurpur. Said Kusum Sharma was engaged in February 2000 as is evident from Ex. RW1/A affidavit of Inder Singh Uttam, Executive Engineer, HPPWD, B&R Division Nurpur and she continued to work uninterruptedly till January 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged at any point of time rather she is stated to be still working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February, 2000 she cannot be stated to be junior the petitioner as her service had been placed at the disposal of Executive Engineer, HPPWD Nurpur in pursuance to her request allowed by competent authority and that she had been initially engaged in November 1983 and transferred to Suliali Sub-Division as has been admitted by RW1 in cross-examination.

13. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub Division at Jawali and Nurpur in the year 1994. In the case in hand evidence qua petitioner revealed that he had been engaged in Suliali Sub-Division in April 1988 wherefrom he was allegedly terminated in the year 1990. This Suliali Sub Division was under Jassur Division out of which Jawali Sub Division was made in the year 1999 as per Notification dated 21st July 1994 as shown in affidavit Ex. RW1/A on record. RW1 further stated that Jassur Division cease to exist consequent upon creation of Nurpur and Jawali Sub Division meaning thereby that on creation of Jawali Sub Division and Nurpur, Suliali Sub-Division had fallen under the Nurpur Division. Said Kusum Sharma is shown to have joined at Suliali Sub-Division on transfer as deposed by RW1 which consequently fell under Nurpur. It is evident from evidence on record that petitioner had been working under Suliali Sub-Division but with the bifurcation of Divisions, it cannot be concluded that petitioner was disengaged in the month of September 1988 by respondent rather prior to creation of these two new Divisions *i.e.* Nurpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This plea of respondent has although not been accepted but it cannot be also stated that petitioner had been disengaged by respondent by a verbal order as claimed by petitioner. Similarly, no written representation was made to respondent as alleged in claim petition has been brought in evidence. In view of foregoing plea of petitioner that Section 25-G was violated cannot be accepted moreso when there is no *iota* of evidence qua engagement of petitioner by respondent even for a single day and for similar reasons, plea of petitioner that respondent had violated Section 25-H of the Act can also not be accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of forgoing discussions, issue No. 1 is decided in negative holding that termination of service of petitioner by the respondent in October, 1990 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3 :

14. Since the petitioner has failed to prove that he ever worked with the respondent as beldar and thus there existed no relationship of employer and workman and therefore respondent

cannot be stated to have violated provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act and on this score petition is held to be not maintainable. Issue in question is answered in negative in favour of respondent and against petitioner.

Issue No. 4 :

15. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors., AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

16. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

17. As a sequel to my findings on foregoing issues No. 1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of June, 2018.

K .K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref. No. : 326/2016

Date of Institution : 26-05-2016

Date of Decision : 23-06-2018

Shri Babu Ram s/o Shri Vijay Singh, r/o Village Baradi, P.O. Suliali, Tehsil Nurpur, District Kangra, H.P.Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Jawali Division, Jawali, District Kangra, H.P.Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.D. Sharma, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Babu Ram s/o Shri Vijay Singh, r/o Village Baradi, P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. during 09/1988 by (i) the Executive Engineer, H.P.P.W.D. Nurpur Division, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D. Jawali Division, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas he has raised the dispute after lapse of 25 years. If not, keeping in view delay of more than 25 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of August 1986 in Suliali Sub-Division HPPWD falling under HPPWD Division Nurpur, District Kangra, H.P. where he continuously worked till September, 1988 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in September 1988 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national highway and had worked to the satisfaction of respondent and other superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent, he had made several verbal request to respondent by visiting its office as well as office at Sub Division Suliali who was assured of reengagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for reengagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily wage basis by HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of 'Last come First go'. It is alleged that in utter disregard to the provisions of Section 25-G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer-in-Chief *vide* letter No. 3058/61 dated 18.1.2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1990 which clearly violates Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for reemployment/reengagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability and petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in August 1986 in HPPWD Division Nurpur and was disengaged in September 1988. It is alleged that HPPWD Division Jassur was shifted to Jawali Division *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub-Division was shifted to Nurpur Division. It has been emphatically denied that petitioner was ever engaged by the respondent and the question of completion of 240 days did not arise. It is alleged that since Suliali Sub-Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in September 1988 did not arise. Moreover, petitioner has alleged to gainfully employed as an agriculturist. However, denied that any resolution was pending before Assistant Registrar, H.P. State Administrative Tribunal for want of knowledge. It is further stated that petitioner was never engaged by the respondent and violation of any provisions of the Industrial Disputes Act does not arise. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand,

repudiating the evidence led by the petitioner, respondent examined RW1 Shri Dinesh Kumar Dhiman, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of notification dated 21.7.1994 Ex. RW1/B, copy of office order dated 23.7.1994 Ex. RW1/C, copy of order dated 29.11.2010 Ex. RW1/D, copy of letter dated 18.12.1999 Ex. RW1/E, copy of letter dated 18.1.2000 Ex. RW1/F and closed evidence.

7. I have heard the ld. Counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 31.08.2017 for determination which are as under :—

1. Whether termination of services of the petitioner by the respondents during September 1988 is/was illegal and unjustified as alleged? ...OPP.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP
3. Whether the claim petition is not maintainable in the present form as alleged? ...OPR.
4. Whether the claim petition is bad on the ground of delay and laches as alleged? ...OPR.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No.3 : Yes

Issue No.4 : No

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that petitioner had neither proved mandays chart nor produced seniority list in absence of which it would be unsafe to hold that respondent had violated Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. Be it stated here that there is only oral evidence on record adduced by the parties in support of their respective contentions and that there is no documentary evidence led by either parties to claim petition. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. Be it stated that petitioner has specifically alleged that he had completed 240 days

having worked from August 1986 to September 1988. He has also stated to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari besides maintained that his service had been terminated/disengaged verbally in the year 1988 by respondent despite availability of work and funds. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not at all worked with the respondent. As such, from evidence on record, it cannot be stated that petitioner had worked for 240 days. For the applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days and his testimony was required to be substantiated from evidence on record. As such, when petitioner has not proved to have factually worked with respondent question of completing 240 days did not arise and thus respondent was not required to issue any notice while disengaging him from service.

12. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand petitioner has emphasized enough that juniors were retained whereas petitioner had been disengaged. In his affidavit Ex. PW1/A petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the pleas so raised by petitioner, it would be relevant to go through evidence qua period when said Kusum Sharma had been engaged. Ld. Dy. D.A. for respondent has contended that Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub-Division No.1 HPPWD Banikhet as reflected in affidavit of RW1. Be it stated that Kusum Sharma had been engaged in November, 1983 by HPPWD Banikhet Division. Said Kusum Sharma continued to work till November 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla *vide* petitioner's application requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub-Division which was allowed in her favour on 18.1.2000 RW1 further stated that one post of Store Clerk (work charged brought in regular cadre) had been allotted to Circle at HPPWD Nurpur. Said Kusum Sharma was engaged in February, 2000 as is evident from Ex. RW1/A affidavit of Inder Singh Uttam, Executive Engineer, HPPWD, B&R Division Nurpur and she continued to work uninterruptedly till January 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged at any point of time rather she is stated to be still working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February 2000 she cannot be stated to be junior the petitioner as her service had been placed at the disposal of Executive Engineer HPPWD Nurpur in pursuance to her request allowed by competent authority and that she had been initially engaged in November 1983 and transferred to Suliali Sub-Division as has been admitted by RW1 in cross-examination.

13. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub-Division at Jawali and Nurpur in the year 1994. In the case in hand evidence qua petitioner revealed that he had been engaged in Suliali Sub-Division in April, 1988 wherefrom he was allegedly terminated in the year 1990. This Suliali Sub-Division was under Jassur Division out of which Jawali Sub-Division was made in the year 1999 as per Notification dated 21st July 1994 as shown in affidavit Ex. RW1/A on record. RW1 further stated that Jassur Division cease to exist consequent upon creation of Nurpur and Jawali Sub-Division meaning thereby that on creation of Jawali Sub Division and Nurpur, Suliali Sub-Division had fallen under the Nurpur Division. Said Kusum Sharma is shown to have joined at Suliali Sub-Division on transfer as deposed by RW1 which consequently fell under Nurpur. It is evident from evidence on record that petitioner had been working under Suliali Sub-Division but with the bifurcation of Divisions, it cannot be concluded that petitioner was disengaged in the month of September 1988 by respondent rather prior to creation of these two new Divisions *i.e.* Nurpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This plea of respondent has although not been accepted but it cannot be also stated that petitioner had been disengaged by respondent by a verbal order as claimed by petitioner. Similarly, no written representation was made to respondent as alleged in claim petition has been brought in evidence. In view of foregoing plea of petitioner that

Section 25-G was violated cannot be accepted more so when there is no iota of evidence qua engagement of petitioner by respondent even for a single day and for similar reasons, plea of petitioner that respondent had violated Section 25-H of the Act can also not be accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of forgoing discussions, issue No.1 is decided in negative holding that termination of service of petitioner by the respondent in September, 1988 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3 :

14. Since the petitioner has failed to prove that he ever worked with the respondent as beldar and thus there existed no relationship of employer and workman and therefore respondent cannot be stated to have violated provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act and on this score petition is held to be not maintainable. Issue in question is answered in negative in favour of respondent and against petitioner.

Issue No. 4 :

15. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in **Bhatag Ram's case (2007 LHLJ 903)**. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors., AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

16. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot

be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief:

17. As a sequel to my findings on foregoing issues No.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of June, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM- INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(Camp at Mandi)**

Ref. No. 473/ 2015

Sh. Chet Ram s/o Sh. Ram Singh, r/o Village Shaw, P.O. Behli, Tehsil Sundernagar,
District Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Karsog, District Mandi, H.P.*Respondent.*

27-06-2018 Present: None for the petitioner

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.40 A.M. Be awaited and put up after lunch hours.

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

27-06-2018 Present: None for the petitioner

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent

Case has been called again several times but none has appeared on behalf of petitioner. None appearance of petitioner or his ld. counsel today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
27-06-2018

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(Camp at Mandi)**

Ref. No. 476/ 2015

Sh. Tek Chand s/o Sh. Chhaju Ram, r/o Village Gorta, P.O. Behli, Tehsil Sundernagar,
District Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Karsog, District Mandi, H.P.*Respondent.*

27-06-2018 Present: None for the petitioner

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.37 A.M. Be awaited and put up after lunch hours.

K .K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

27-06-2018 Present: None for the petitioner

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent

Case has been called again several times but none has appeared on behalf of petitioner. None appearance of petitioner or his ld. counsel today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
27-06-2018

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(Camp at Mandi)**

Ref. No. 475/ 2015

Sh. Seva Nand s/o Sh. Neel Kanth, Village Jadiun, P.O. Behli, Tehsil Sarkaghat, District Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Karsog, District Mandi, H.P. ...*Respondent.*

27-06-2018 Present: None for the petitioner

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.35 A.M. Be awaited and put up after lunch hours.

K .K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

27-06-2018 Present: None for the petitioner

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent

Case has been called again several times but none has appeared on behalf of petitioner. None appearance of petitioner or his Id. counsel today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
27-06-2018

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM- INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(Camp at Mandi)**

Ref. No. 477/ 2015

Sh. Govind s/o Sh. Bhawani Dutt, r/o Village Sojha, P.O. Behli, Tehsil Sunder Nagar, District Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Karsog, District Mandi, H.P.*Respondent.*

27-06-2018 Present: None for the petitioner

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

K .K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

27-06-2018 Present: None for the petitioner

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent

Case has been called again several times but none has appeared on behalf of petitioner. None appearance of petitioner or his Id. Counsel today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
27-06-2018

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(Camp at Mandi)**

Ref. No. 474/ 2015

Sh. Bhagat Singh s/o Sh. Tulsi Ram, r/o Village Jadiun, P.O. Behli, Tehsil Sunder Nagar,
District Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Karsog, District Mandi, H.P. ...*Respondent.*

27-06-2018 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.32 A.M. Be awaited and put up after lunch hours.

K .K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

27-06-2018 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. None appearance of petitioner or his ld. counsel today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
27-06-2018

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(Camp At Mandi)**

Ref. No. : 50/2015
Date of Institution : 23-02-2015
Date of Decision : 27-6-2018

Smt. Urmila Devi *alias* Rumla Devi w/o Shri Hari Dass, r/o Village Dhanrasi, P.O. Sadhot,
Tehsil Sarkaghat, District Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, Dharampur Division, HPPWD Dharampur, District Mandi, H.P.
....*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.K. Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Smt. Urmila Devi *alias* Rumla Devi w/o Shri Hari Dass, r/o Village Dhanrasi, P.O. Sadhot, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, Dharampur Division, H.P.P.W.D. Dharampur, District Mandi, H.P. *vide* demand notice dated 13-08-2010 regarding her alleged illegal termination of service *w.e.f.* 09-07-2005 suffers from delay and laches? If not, Whether termination of the services of Smt. Urmila Devi w/o Shri Hari Dass, r/o Village Dhanrasi, P.O. Sadhot, Tehsil Sarkaghat, District Mandi, H.P. *w.e.f.* 09-07-2005 by the Executive Engineer, Dharampur Division, H.P.P.W.D. Dharampur, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. After the receipt of the abovestated reference, a corrigendum dated 19th March, 2016 was received from the appropriate government which reads as under:

“In partial modification of this Department’s Notification of even number dated 17.01.2015, the date of termination of services of workman Smt. Urmila Devi *alias* Rumla Devi w/o Shri Hari Dass, r/o Village Dhanrasi, P.O. Sadhot, Tehsil Sarkaghat, District Mandi, H.P. may be read as “08.7.2005” instead of “09-7-2005”.

3. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

4. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged as daily waged beldar by respondent on 19.4.1999 where she worked upto 7.7.2005 when

her services were illegally retrenched on 8.7.2005. Averment made in the claim petition revealed that respondent had not prepared any seniority list and that juniors to the petitioner who worked in the same category had been allowed to remain in continuous service and thus respondent is alleged to have not followed the procedure of retrenchment envisaged under Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act" for brevity) which is based on the doctrine of 'First come Last go'. It further remains the case of the claimant that persons namely Savitri, Rajesh Kumar, Shashi Lal, Sat Pal, Roshani, Gulab Singh, Devender Kumar, Barfu Ram, Krishan Devi, Achhari Devi, Barfi Devi, Raj Kumar and Ranjeet Singh were juniors to her who were allowed to continue service and have been regularized on 28.11.2008. It is claimed that despite availability of sufficient work and funds, respondent had retrenched petitioner and several others and that retrenchment was violation of provisions of Sections 25-G, 25-H and 25-N of the Act. It further transpires from the claim petition that Labour Commissioner was notified as "Specified Authority" by government of Himachal Pradesh *vide* Notification no.19-8/89-Shram(loose) dated 7.9.1992 for the purpose of Section of 25-N but government in order to facilitate itself got the above said power conferred upon Chief Engineer, Central Zone, Mandi *vide* Notification No.Shram(a)4-1/2005 dated 14.2.2005. It is claimed that Dharampur HPPWD is establishment under Section 25-K and 25-L of the Act which required respondent to seek permission from "Specified Authority" or the appropriate govt. under Section 25-N of the Act while retrenching workmen. It is claimed that Chief Engineer, HPPWD had been illegally appointed as Specified Authority as he himself is head of HPPWD under which respondent worked. It is further stated that respondent in the month of April 2005 after conferment of power upon Chief Engineer served with notice under Section 25- N of the Act to petitioner and several others who had filed CWP No. 486/2005 before the Hon'ble High Court of H.P. challenging Notification dated 14.2.2005 qua conferment of power on Chief Engineer, HPPWD. It is claimed that even after filing writ petition, petitioner and others co-workmen were retrenched. It is alleged that CWP no.486/2005 was heard by Hon'ble High Court of H.P. in which it was held that such type of notification qua conferment of powers of Specified Authority upon Chief Engineer HPPWD was not sustainable in the eyes of law and thereafter the notification dated 14.2.2005 was rescinded and the powers of Specified Authority was again conferred upon Labour Commissioner, H.P. It is claimed that some of the retrenched workers had raised industrial dispute before Conciliation Officer but conciliation failed and matter was thereafter referred to this court for adjudication and thereafter awards were passed on 30.3.2009 in favour of workmen *vide* which they were given benefit of reinstatement, seniority and back wages. It is alleged that part of back wages was challenged by respondent in Hon'ble High Court of H.P. and the same was decided *vide* common judgment reported in LHLJ 2010 Vol. 2 titled as Executive Engineer, HPPWD Dharampur vs. Dhani Ram/Nihal Chand decided on 13.5.2010 *vide* which instead of 50% back wages, a lump sum compensation of Rs.50,000/- was granted to the retrenched workmen. It is further alleged that in compliance to the award passed by this court on 30.3.2009, 43 retrenched workmen joined their duties *w.e.f.* 16.9.2009 and even at that time petitioner requested verbally to respondent to reinstate her who was senior to those retrenched workmen engaged in pursuance to award dated 30.3.2009 but respondent did not reengage petitioner. It is also claimed by petitioner that despite visiting office of respondent several times requesting to reinstate but matter was lingered on one pretext to other and also on the ground of the decision for reinstatement was to be taken by the government. Accordingly, petitioner referring to various reported judgments in her claim petition has prayed for her reinstatement along-with back wages, continuity in service from the date of illegal retrenchment/termination along-with other consequential benefits and to any other relief petitioner is found entitled besides regularization as per the provisions of law or from the date when juniors to her have been regularized.

5. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged in April 1999 who had worked upto 7.7.2005 and was retrenched on 8.7.2005 after adopting all requisite codal formalities. It is alleged that some junior daily waged workers were transferred to

Dharampur Division from other Division but their seniority lists were not received as such they were retained however after receiving the seniority list, retrenchment notice to those juniors had been served who were surplus and not required by respondent. Further denied that respondent had violated principle of 'First come Last go'. In so far as delegation of powers of Specified Authority to Chief Engineer (B&R) Central Zone Mandi on 14.2.2005 is concerned, it is contended that Notification dated 14.2.2005 qua delegation of powers to Chief Engineer, North Zone was rescinded and notice for permission for retrenchment of workmen had been obtained after giving reasonable opportunity of being heard to these workmen. It is also claimed that respondent would reengage the retrenched workmen including petitioner as and when any seasonal work existed however further denied that notification qua conferment of powers to Chief Engineer, HPPWD as "Specified Authority" was made with the object to retrench the petitioner and other co-workers. It is emphatically denied that petitioner ever requested respondent for reengagement rather petitioner had raised demand notice in the year 2010 after about five years. It is also admitted that as per awards of this court, 43 workmen were reengaged but the petitioner had not filed any case before any court and those who had filed case before Labour Court were engaged. It is denied that petitioner was illegally retrenched however admitted that instead of back wages, a lump-sum amount of Rs. 50,000/- was ordered to be granted to those workmen who had been retrenched and were parties before the Hon'ble High Court of H.P. in CWP No. 1387/2010 titled as Nihal Chand vs. State of H.P. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

7. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. P1, copies of demand notices of other workers namely Mali Devi, Sita Ram, Basant Singh, Koshalya Devi, Magru Dutt, Nawab Khan, Sanjay Kumar, Kanta Devi, Drompati Devi, Shailander, Raman Kumar, Amar Singh, Manohar Lal, Gobind Ram, Kashmir Singh, Budhi Singh, Achhru Ram, Rajender Pal, Sapindra Devi, Balwant Singh, Dhobi Devi, Krishni Devi, Prem Singh, Kamli Devi, Om Chand, Sunita Devi, Savitri Devi, Ruma Devi, Sheela Devi, Nathu Ram, Roshani Devi, Puran Chand, Pawan Kumar, Kamla Devi, Kunta Devi, Lachhman, Pratap Chand, Mansa Devi, Puran Chand, Kamla Devi, Saroja Devi, Duni Chand and Kishori Lal respectively Ex. P2 to Ex. P43, copy of demand notice of petitioner Ex. P-44 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, Executive Engineer, HPPWD Division Dharampur, tendered/proved his affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed evidence.

8. I have heard the ld. counsel representing parties gone through evidence on record of this case carefully relevant for dispose of present claim petition.

9. From the contentions raised, following issues were framed on 8.12.2015 for determination:—

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 13.8.2010 qua her termination of service during 9.7.2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...OPP.
2. Whether termination of services of the petitioner by the respondent *w.e.f.* 9.7.2005 is/was improper and unjustified as alleged? ...OPP.
3. If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
4. Whether the claim petition is not maintainable in the present form? ...OPR.

Relief.

10. It is pertinent to mention here that *vide* corrigendum dated 19th March, 2016 date of retrenchment was shown as 8.7.2005 instead of 9.7.2005. It has come in the evidence that factually petitioner remained in service till 7.7.2005 and service of petitioner was terminated on next date *i.e.* on 8.7.2005 and not on 9.7.2005 and as such in issues no. 1 and 2 date of termination shall be read as 8.7.2005 and not 9.7.2005 and the findings shall on the basis of date of retrenchment in this case on 8.7.2005.

11. For the reasons to be recorded hereinafter, my findings on the above issues are as follows:—

Issue No.1 :	Discussed
Issue No.2 :	Yes
Issue No.3:	Discussed
Issue No.4 :	No
Relief :	Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 3:

12. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

13. At the outset, it is apt to mention here that respondent RW1 in the witness box has admitted that as per seniority list Ex. P1 workmen shown therein were junior to petitioner and that when petitioner was retrenched these juniors were allowed to remain in service. By such an admission, RW1 has not only admitted retrenchment of petitioner in violation of doctrine of 'Last come First go' envisaged under Section 25-G of the Act but at the same time, he has also admitted relationship with the petitioner for having worked from April 1999 to 7.7.2005 as daily waged beldar under respondent. The case of the petitioner simplicitor is that she has been illegally retrenched, retaining juniors which was sheer discrimination as the only purpose for retrenchment was to retain the junior who were the workmen of choice of respondent. In so far as award passed in favour of 43 similarly situated workers are concerned, RW1 has admitted that in CWP No.5189/2013 titled as Kanta Devi vs. State of H.P. and Ors. similarly situated workmen as that of petitioner had been reinstated giving benefit of seniority with continuity in service and a lump-sum back wages of Rs. 50,000/- . Significantly, RW1 has admitted that order passed Kanta Devi's case (*supra*) has been implemented by respondent besides admitted that Hon'ble High Court of H.P. has held that retrenchment was illegal and not in accordance with law.

14. PW1 Urmila Devi (petitioner) has stepped into witness box as PW1 sworn in affidavit Ex. PW1/A deposed on oath as maintained in claim petition. In cross-examination, she has denied that no junior to her had been retained while retrenching her although admitted that while retrenching, notice was given to her by respondent and compensation was paid to her in the year 2005. Thus, case of the petitioner qua retrenchment would squarely fall under Section 25-H of the Act as respondent while retrenching petitioner had not only issued notice but also paid

retrenchment compensation in 2005 as admitted by the petitioner. From cross-examination of RW1, it is evident that retrenchment of petitioner was arbitrarily made as juniors to petitioner were retained and not reinstated despite her request RW1 has admitted that respondent had issued demand notice Ex.P-44 prior to raising industrial dispute.

15. Ex. RW1/B is mandays chart relating to petitioner which showed her to have worked for 238 days in the year 1999, 293 days in 2000, 355 days in 2001, 360 days in 2002, 359 days in 2003, 293 days in 2004 and 183 days in 2005 respectively. Since it is admitted case of the party that retrenchment compensation has been paid under Section 25-N of the Act, the provisions of Section 25-F of the Act would not be attracted in the facts and circumstances of the case. Be it stated that Ex. P1 is seniority list of daily waged beldar in respect of Dharampur Division which showed that those workmen who had completed eight years of service as on 31.3.2008 were regularized. Ex. P2 to P43 are the demand notices issued by several retrenched workers as enumerated in these notices. With the aid of copies of these notices, Id. counsel for petitioner has established that petitioner in this case had issued demand notice Ex. P44 on 13.8.2010 whereas all the 43 retrenched workmen had given demand notice later than petitioner and were reinstated by the department in pursuance to order of Hon'ble High Court of H.P. as stated above. Thus, while relying upon these demand notices petitioner has also sought relief of reinstatement based on equity as those workmen who were similarly situated have been reinstated with consequential benefits although in pursuance to court order whereas Id. Dy. D.A. representing respondent has stated that although respondent had issued demand notice in less than five years from date of her retrenchment yet for the delay in raising demand notice, the petitioner is not entitled to relief sought for.

16. Id. Dy. D.A. representing respondent has placed reliance upon the judgment of Hon'ble Apex Court reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer, Rajasthan Development Corporation and another vs. Geetam Singh**. In this judgment Hon'ble Apex Court has held that delay in raising industrial dispute is certainly important aspect/ circumstance which labour court has to keep in mind while exercising discretion at the time of giving final relief. In para Nos. (20) and (21) of the judgment (*supra*) it has been held that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. In the case before Hon'ble Apex Court (2013) workman concerned had worked merely for 286 days and raised industrial dispute in 1992 whose service had been terminated in 1986 and had thus raised industrial dispute after **six years** from date of termination. The Hon'ble Apex Court has held that compensation awarded by Single Judge of the Hon'ble High Court was too low and awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum. In this judgment criteria was prescribed when compensation would be appropriate relief instead of engagement. On the other hand, Id. counsel for petitioner has placed reliance upon judgment of Hon'ble High Court of Punjab & Haryana titled as **Naval Singh vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in **[2018 (157) FLR 746]** and the relevant para is reproduced below:

“Termination-of-workmen-Appeal-Appellant also deserves to be granted similar relief- Which has been granted by State to other workmen, whose services retrenched at same time-Services of all other workmen were regularized-The appellant should not be discriminated.....”

17. Relying upon the judgment (2018), Id. Counsel for petitioner has vehemently contended that all the 43 co-workmen including the petitioner who had been retrenched were similarly situated and have now been engaged in pursuance to court order *vide* which relief of reinstatement in service and lump-sum compensation of Rs.50,000/- had been granted. Since the

petitioner as well as co-workmen reinstated are similarly situated and that petitioner has given reasonable explanation for delay in approaching this court for redressal of her grievance, the petitioner would in equity entitled to similar relief as has been granted to other co-workmen earlier who had although issued various demands notices referred to above later than petitioner. Thus, it cannot be stated that petitioner was negligent or had caused delay in moving before the labour authorities. Accordingly, it is held that petitioner like other co-workmen would also be entitled to the same relief in view of judgment of titled as **Naval Singh vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in [2018 (157) FLR 746] as well as judgment dated 20.12.2012 passed in **Kanta Devi vs. State of H.P. & Ors.** in CWP No.5189/2012. The case of petitioner gets further strengthens from order dated 13.5.2010 titled as **The Executive Engineer, Dharampur HPPWD Dharampur vs. Dhani Ram** in CWP No.1365/2010. In such circumstances, the judgment of Hon'ble Apex Court (2013) is not at all attracted in as it merely provides guidelines and factors to be considered by court before granting final relief but that does not in any manner prescribe "**all possible aspects and circumstances**" and in the case in hand having different facts and applying principle of equity also petitioner can be granted same relief by reinstatement in service as given to other co-workmen as stated above and other consequential benefits except back wages as petitioner himself had admitted in cross-examination that he had cultivable land and as such she cannot be stated to have remained unemployed from date of illegal termination.

18. I have gone through the above said judgment, evidence relied upon by the parties and of the view that judgment (2013) of Hon'ble Apex Court in question does not prohibit this court to take into consideration all relevant circumstances while granting final relief to the petitioner. It may not be erroneous to mention here that the Hon'ble Apex Court has not provided any **straight jacket formula** showing some specific ground where to deny reinstatement in service rather various factors which must weigh in the mind of this court while granting final relief to petitioner. In the case in hand, petitioner had served notice after less than **five years** who had established that respondent had violated Section 25-G of the Act by not following rightful procedure while retrenching petitioner as stated above. Not only this, the seniority list Ex. P1 relied upon by petitioner in unambiguous terms established that junior workmen to petitioner who had been retrenched have been reinstated in pursuance to order of Hon'ble High Court of H.P. which would not in any manner eclipse claim of petitioner from getting relief of reinstatement and other consequential benefit. Although RW1 has denied that petitioner had ever approached him for reengagement and that similar plea has been maintained in reply but in cross-examination RW1 has shown his ignorance if petitioner had requested him orally or in writing for reengagement besides specifically admitted that those co-workmen in whose favour award passed have been engaged. Thus, when RW1 has given evasive reply to question on request of petitioner for reengagement, it is to be read in favour of the petitioner by holding that petitioner had approached respondent for reengagement as RW1 being contesting respondent was required to know if petitioner had requested for reengagement verbally or by in writing and if he was sure that petitioner had not requested him for reengagement as claimed by petitioner, he ought to have refused the same. In view of foregoing discussions, this court is left with no option but to hold that petitioner had been illegally retrenched by respondent and was not reengaged despite 43 co-workers who were similarly situated had been ordered to be reengaged *vide* Award dated 30.3.2009.

19. In so far as claim of petitioner qua back wages is concerned, suffice would be to state here that PW1 in her cross-examination has admitted that she had cultivable land from which she had income and thus she could not be stated to have remained without any income ever since her termination. Ld. Dy. D.A. representing respondent/State has contended with vehemence that full back wages should not be granted mechanically. In this regard judgment of Hon'ble Apex Court reported in **2014 (140) FLR 901 (SC)** titled as **Bharat Sanchar Nigam Ltd. vs. Bhurumal** is quite relevant which provides factors to be considered while granting full wages which could not be granted

automatically. As such, when petitioner himself admitted that he had source of income and in view of judgments referred to above in (2014), the petitioner could not be granted back wages automatically moreso when petitioner has admitted that he had source of income from agricultural land although petitioner is held entitled for relief of reinstatement & in continuity in service and seniority as prayed. Lt. Dy. D.A. for the State has contended that delay in raising demand notice in this case disentitled petitioner relief sought for but factually in this case the delay is less than six years and in view of judgment of Hon'ble Apex Court titled as reported in 2013 also the petitioner cannot be deprived of relief sought for in the circumstance of the case. Keeping in view facts and circumstances of case as has come in the evidence, petitioner is held entitled for reinstatement, continuity in service and seniority with all consequential benefits except of back wages. As such, delay would not effect relief sought for by the petitioner in the peculiar circumstances of case as stated above. In view of foregoing, issue no. 2 is answered in affirmative whereas issue No.1 and 3 are decided as discussed above. All the above-stated issues are decided accordingly.

Issue No. 4 :

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Lt. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of her illegal termination **except back wages**. However, petitioner shall be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of June, 2018.

K .K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
(Camp at Mandi)

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(CAMP AT MANDI)**

Ref. No. : 51/2015
 Date of Institution : 23-02-2015
 Date of Decision : 27-6-2018

Shri Pratap Chand s/o Shri Bhadru Ram, r/o Village Phakrohal, P.O. Seoh, Tehsil Sarkaghat, District Mandi, H.P. ...*Petitioner.*

Versus

The Executive Engineer, B&R Sub Division, HPPWD, Dharampur, District Mandi, H.P. ...*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. S. K. Sharma, Adv.
For the Respondent	: Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Shri Pratap Chand s/o Shri Bhadru Ram, r/o Village Phakrohal, P.O. Seoh, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, B&R Sub-Division, H.P.P.W.D. Dharampur, District Mandi, H.P. *vide* demand notice dated 04-04-2010 regarding his alleged illegal termination of service *w.e.f.* 09-07-2005 suffers from delay and laches? If not, Whether termination of the services of Shri Pratap Chand s/o Shri Bhadru Ram, r/o Village Phakrohal, P.O. Seoh, Tehsil Sarkaghat, District Mandi, H.P. *w.e.f.* 09-07-2005 by the Executive Engineer, B&R Sub-Division, H.P.P.W.D. Dharampur, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. After the receipt of the abovestated reference, a corrigendum dated 19th March, 2016 was received from the appropriate government which reads as under:

“In partial modification of this Department’s Notification of even number dated 17.01.2015, the date of termination of services of workman Shri Pratap Chand s/o Shri Bhadru Ram, r/o Village Phakrohal, P.O. Seoh, Tehsil Sarkaghat, District Mandi, H.P. *may be read as* “08.7.2005” *instead of* “09-7-2005”.

3. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

4. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged as daily waged beldar by respondent on 1.5.1999 where he worked upto 7.7.2005 when his

services were illegally retrenched on 8.7.2005. Averment made in the claim petition revealed that respondent had not prepared any seniority list and that juniors to the petitioner who worked in the same category had been allowed to remain in continuous service and thus respondent is alleged to have not followed the procedure of retrenchment envisaged under Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act" for brevity) which is based on the doctrine of 'First come Last go'. It further remains the case of the claimant that persons namely Savitri, Rajesh Kumar, Shashi Lal, Sat Pal, Roshani, Gulab Singh, Devender Kumar, Barfu Ram, Krishan Devi, Achhari Devi, Barfi Devi, Raj Kumar and Ranjeet Singh were juniors to him who were allowed to continue service and have been regularized on 28.11.2008. It is claimed that despite availability of sufficient work and funds, respondent had retrenched petitioner and several others and that retrenchment was violation of provisions of Sections 25-G, 25-H and 25-N of the Act. It further transpires from the claim petition that Labour Commissioner was notified as "Specified Authority" by government of Himachal Pradesh *vide* Notification No. 19-8/89-Shram (loose) dated 7.9.1992 for the purpose of Section of 25-N but government in order to facilitate itself got the above said power conferred upon Chief Engineer, Central Zone, Mandi *vide* Notification No. Shram(a)4-1/2005 dated 14.2.2005. It is claimed that Dharampur HPPWD is establishment under Section 25-K and 25-L of the Act which required respondent to seek permission from "Specified Authority" or the appropriate govt. under Section 25-N of the Act while retrenching workmen. It is claimed that Chief Engineer, HPPWD had been illegally appointed as Specified Authority as he himself is head of HPPWD under which respondent worked. It is further stated that respondent in the month of April, 2005 after conferment of power upon Chief Engineer served with notice under Section 25-N of the Act to petitioner and several others who had filed CWP No. 486/2005 before the Hon'ble High Court of H.P. challenging Notification dated 14.2.2005 qua conferment of power on Chief Engineer, HPPWD. It is claimed that even after filing writ petition, petitioner and others co-workmen were retrenched. It is alleged that CWP No. 486/2005 was heard by Hon'ble High Court of H.P. in which it was held that such type of notification qua conferment of powers of Specified Authority upon Chief Engineer HPPWD was not sustainable in the eyes of law and thereafter the notification dated 14.2.2005 was rescinded and the powers of Specified Authority was again conferred upon Labour Commissioner, H.P. It is claimed that some of the retrenched workers had raised industrial dispute before Conciliation Officer but conciliation failed and matter was thereafter referred to this court for adjudication and thereafter awards were passed on 30.3.2009 in favour of workmen *vide* which they were given benefit of reinstatement, seniority and back wages. It is alleged that part of back wages was challenged by respondent in Hon'ble High Court of H.P. and the same was decided *vide* common judgment reported in LHLJ 2010 Vol. 2 titled as Executive Engineer, HPPWD Dharampur vs. Dhani Ram/Nihal Chand decided on 13.5.2010 *vide* which instead of 50% back wages, a lump sum compensation of Rs. 50,000/- was granted to the retrenched workmen. It is further alleged that in compliance to the award passed by this court on 30.3.2009, 43 retrenched workmen joined their duties *w.e.f.* 16.9.2009 and even at that time petitioner requested verbally to respondent to reinstate him who was senior to those retrenched workmen engaged in pursuance to award dated 30.3.2009 but respondent did not reengage petitioner. It is also claimed by petitioner that despite visiting office of respondent several times requesting to reinstate but matter was lingered on one pretext to other and also on the ground of the decision for reinstatement was to be taken by the government. Accordingly, petitioner referring to various reported judgments in his claim petition has prayed for his reinstatement alongwith back wages, continuity in service from the date of illegal retrenchment/termination along-with other consequential benefits and to any other relief petitioner is found entitled besides regularization as per the provisions of law or from the date when juniors to him have been regularized.

5. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged in July 1999 who had worked upto 7.7.2005 and was retrenched on 8.7.2005 after adopting all requisite codal formalities. It is alleged that some junior daily waged workers were transferred to

Dharampur Division from other Division but their seniority lists were not received as such they were retained however after receiving the seniority list, retrenchment notice to those juniors had been served who were surplus and not required by respondent. Further denied that respondent had violated principle of 'First come Last go'. In so far as delegation of powers of Specified Authority to Chief Engineer (B&R) Central Zone Mandi on 14.2.2005 is concerned, it is contended that Notification dated 14.2.2005 qua delegation of powers to Chief Engineer, North Zone was rescinded and notice for permission for retrenchment of workmen had been obtained after giving reasonable opportunity of being heard to these workmen. It is also claimed that respondent would reengage the retrenched workmen including petitioner as and when any seasonal work existed however further denied that notification qua conferment of powers to Chief Engineer, HPPWD as "Specified Authority" was made with the object to retrench the petitioner and other co-workers. It is emphatically denied that petitioner ever requested respondent for re-engagement rather petitioner had raised demand notice in the year 2010 after about five years. It is also admitted that as per awards of this court, 43 workmen were reengaged but the petitioner had not filed any case before any court and those who had filed case before Labour Court were engaged. It is denied that petitioner was illegally retrenched however admitted that instead of back wages, a lump sum amount of Rs. 50,000/- was ordered to be granted to those workmen who had been retrenched and were parties before the Hon'ble High Court of H.P. in CWP No. 1387/2010 titled as Nihal Chand vs. State of H.P. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. P1, copies of demand notices of other workers namely Mali Devi, Sita Ram, Basant Singh, Koshalya Devi, Magru Dutt, Nawab Khan, Sanjay Kumar, Kanta Devi, Drompati Devi, Shailander, Raman Kumar, Amar Singh, Manohar Lal, Gobind Ram, Kashmir Singh, Budhi Singh, Achhru Ram, Rajender Pal, Sapindra Devi, Balwant Singh, Dhobi Devi, Krishni Devi, Prem Singh, Kamli Devi, Om Chand, Sunita Devi, Savitri Devi, Ruma Devi, Sheela Devi, Nathu Ram, Roshani Devi, Puran Chand, Pawan Kumar, Kamla Devi, Kunta Devi, Lachhman, Ramesh Chand, Mansa Devi, Puran Chand, Kamla Devi, Saroja Devi, Duni Chand and Kishori Lal respectively Ex. P2 to Ex. P43, copy of demand notice of petitioner Ex. P-44 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, Executive Engineer, HPPWD Division Dharampur, tendered/proved his affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, copy of notice Ex. RW1/C and closed evidence.

8. I have heard the ld. Counsel representing parties gone through evidence on record of this case carefully relevant for dispose of present claim petition.

9. From the contentions raised, following issues were framed on 8.12.2015 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 4.4.2010 qua his termination of service during 9.7.2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...OPP.
2. Whether termination of services of the petitioner by the respondent *w.e.f.* 9.7.2005 is/was improper and unjustified as alleged? ...OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
4. Whether the claim petition is not maintainable in the present form? ...OPR.

Relief.

10. It is pertinent to mention here that *vide* corrigendum dated 19th March, 2016 date of retrenchment was shown as 8.7.2005 instead of 9.7.2005. It has come in the evidence that factually petitioner remained in service till 7.7.2005 and service of petitioner was terminated on next date *i.e.* on 8.7.2005 and not on 9.7.2005 and as such in issues No.1 and 2 date of termination shall be read as 8.7.2005 and not 9.7.2005 and the findings shall on the basis of date of retrenchment in this case on 8.7.2005.

11. For the reasons to be recorded hereinafter, my findings on the above issues are as follows:—

Issue No. 1: Discussed

Issue No. 2: Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Relief: Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 3:

12. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

13. At the outset, it is apt to mention here that respondent RW1 in the witness box has admitted that as per seniority list Ex. P1 workmen shown therein were junior to petitioner and that when petitioner was retrenched these juniors were allowed to remain in service. By such an admission, RW1 has not only admitted retrenchment of petitioner in violation of doctrine of 'Last come First go' envisaged under Section 25-G of the Act but at the same time, he has also admitted relationship with the petitioner for having worked from July 1999 to 7.7.2005 as daily waged beldar under respondent. The case of the petitioner simplicitor is that he has been illegally retrenched, retaining juniors which was sheer discrimination as the only purpose for retrenchment was to retain the junior who were the workmen of choice of respondent. In so far as award passed in favour of 43 similarly situated workers are concerned, RW1 has admitted that in CWP No. 5189/2013 titled as Kanta Devi vs. State of H.P. and Ors. similarly situated workmen as that of petitioner had been reinstated giving benefit of seniority with continuity in service and a lump sum back wages of Rs. 50,000/- . Significantly, RW1 has admitted that order passed Kanta Devi's case (*supra*) has been implemented by respondent besides admitted that Hon'ble High Court of H.P. has held that retrenchment was illegal and not in accordance with law.

14. PW1 Pratap Chand (petitioner) has stepped into witness box as PW1 sworn in affidavit Ex. PW1/A deposed on oath as maintained in claim petition. In cross-examination, he has denied that no junior to him had been retained while retrenching him although admitted that while retrenching, notice was given to him by respondent and compensation was paid to him in the year 2005. Thus, case of the petitioner qua retrenchment would squarely fall under Section 25-H of the Act as respondent while retrenching petitioner had not only issued notice but also paid retrenchment compensation in 2005 as admitted by the petitioner. From cross-examination of RW1,

it is evident that retrenchment of petitioner was arbitrarily made as juniors to petitioner were retained and not reinstated despite his request RW1 has admitted that respondent had issued demand notice Ex.P-44 prior to raising industrial dispute.

15. Ex. RW1/B is mandays chart relating to petitioner which showed him to have worked for 148 days in the year 1999, 327 days in 2000, 324 days in 2001, 343 days in 2002, 316 days in 2003, 287 days in 2004 and 184 days in 2005 respectively. Ex. RW1/C is copy of notice under Section 25-N of the Act. As such, when respondent had complied with requirement of Section 25-N of the Act and also paid compensation and as such provisions of Section 25-F would certainly not be attracted in the facts and circumstances of case and it can also be not stated that respondent had not violated Section 25-N of the Act. Be it stated that Ex. P1 is seniority list of daily waged beldar in respect of Dharampur Division which showed that those workmen who had completed eight years of service as on 31.3.2008 were regularized. Ex. P2 to P 43 are the demand notices issued by several retrenched workers as enumerated in these notices. With the aid of copies of these notices, ld. counsel for petitioner has established that petitioner in this case had issued demand notice Ex. P44 on 4.4.2010 whereas all the 43 retrenched workmen had given demand notice later than petitioner and were reinstated by the department in pursuance to order of Hon'ble High Court of H.P as stated above. Thus, while relying upon these demand notices petitioner has also sought relief of reinstatement based on equity as those workmen who were similarly situated have been reinstated with consequential benefits although in pursuance to court order whereas ld. Dy. D.A. representing respondent has stated that although respondent had issued demand notice in less than five years from date of his retrenchment yet for the delay in raising demand notice, the petitioner is not entitled to relief sought for.

16. Ld. Dy. D.A. representing respondent has placed reliance upon the judgment of Hon'ble Apex Court reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer, Rajasthan Development Corporation and another vs. Geetam Singh**. In this judgment Hon'ble Apex Court has held that delay in raising industrial dispute is certainly important aspect/circumstance which labour court has to keep in mind while exercising discretion at the time of giving final relief. In para Nos. (20) and (21) of the judgment (*supra*) it has been held that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. In the case before Hon'ble Apex Court (2013) workman concerned had worked merely for 286 days and raised industrial dispute in 1992 whose service had been terminated in 1986 and had thus raised industrial dispute after **six years** from date of termination. The Hon'ble Apex Court has held that compensation awarded by Single Judge of the Hon'ble High Court was too low and awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum. In this judgment criteria was prescribed when compensation would be appropriate relief instead of engagement. On the other hand, ld. counsel for petitioner has placed reliance upon judgment of Hon'ble High Court of Punjab & Haryana titled as **Naval Singh vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in [2018 (157) FLR 746] and the relevant para is reproduced below:

“Termination-of-workmen-Appeal-Appellant also deserves to be granted similar relief- Which has been granted by State to other workmen, whose services retrenched at same time-Services of all other workmen were regularized-The appellant should not be discriminated.....”

17. Relying upon the judgment (2018), ld. Counsel for petitioner has vehemently contended that all the 43 co-workmen including the petitioner who had been retrenched were similarly situated and have now been engaged in pursuance to court order *vide* which relief of

reinstatement in service and lump-sum compensation of Rs.50,000/- had been granted. Since the petitioner as well as co-workmen reinstated are similarly situated and that petitioner has given reasonable explanation for delay in approaching this court for redressal of his grievance, the petitioner would in equity entitled to similar relief as has been granted to other co-workmen earlier who had although issued various demands notices referred to above later than petitioner. Thus, it cannot be stated that petitioner was negligent or had caused delay in moving before the labour authorities. Accordingly, it is held that petitioner like other co-workmen would also be entitled to the same relief in view of judgment of titled as **Naval Singh vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in [2018 (157) FLR 746] as well as judgment dated 20.12.2012 passed in **Kanta Devi vs. State of H.P. & Ors.** in CWP No. 5189/2012. The case of petitioner gets further strengthens from order dated 13.5.2010 titled as **The Executive Engineer, Dharampur HPPWD Dharampur vs. Dhani Ram** in CWP No. 1365/2010. In such circumstances, the judgment of Hon'ble Apex Court (2013) is not at all attracted in as it merely provides guidelines and factors to be considered by court before granting final relief but that does not in any manner prescribe "**all possible aspects and circumstances**" and in the case in hand having different facts and applying principle of equity also petitioner can be granted same relief by reinstatement in service as given to other co-workmen as stated above and other consequential benefits except back wages as petitioner himself had admitted in cross-examination that he had cultivable land and as such he cannot be stated to have remained unemployed from date of illegal termination.

18. I have gone through the above said judgment, evidence relied upon by the parties and of the view that judgment (2013) of Hon'ble Apex Court in question does not prohibit this court to take into consideration all relevant circumstances while granting final relief to the petitioner. It may not be erroneous to mention here that the Hon'ble Apex Court has not provided any **straight jacket formula** showing some specific ground where to deny reinstatement in service rather various factors which must weigh in the mind of this court while granting final relief to petitioner. In the case in hand, petitioner had served notice after less than **five years** who had established that respondent had violated Section 25-G of the Act by not following rightful procedure while retrenching petitioner as stated above. Not only this, the seniority list Ex. P1 relied upon by petitioner in unambiguous terms established that junior workmen to petitioner who had been retrenched have been reinstated in pursuance to order of Hon'ble High Court of H.P. which would not in any manner eclipse claim of petitioner from getting relief of reinstatement and other consequential benefit. Although RW1 has denied that petitioner had ever approached him for reengagement and that similar plea has been maintained in reply but in cross-examination RW1 has shown his ignorance if petitioner had requested him orally or in writing for reengagement besides specifically admitted that those co-workmen in whose favour award passed have been engaged. Thus, when RW1 has given evasive reply to question on request of petitioner for reengagement, it is to be read in favour of the petitioner by holding that petitioner had approached respondent for reengagement as RW1 being contesting respondent was required to know if petitioner had requested for reengagement verbally or by in writing and if he was sure that petitioner had not requested him for reengagement as claimed by petitioner, he ought to have refused the same. In view of foregoing discussions, this court is left with no option but to hold that petitioner had been illegally retrenched by respondent and was not reengaged despite 43 co-workers who were similarly situated had been ordered to be reengaged *vide* Award dated 30.3.2009.

19. In so far as claim of petitioner qua back wages is concerned, suffice would be to state here that PW1 in his cross-examination has admitted that he had cultivable land from which he had income and thus he could not be stated to have remained without any income ever since his termination. Ld. Dy. D.A. representing respondent/State has contended with vehemence that full back wages should not be granted mechanically. In this regard judgment of Hon'ble Apex Court reported in **2014 (140) FLR 901 (SC)** titled as **Bharat Sanchar Nigam Ltd. vs. Bhurumal** is quite

relevant which provides factors to be considered while granting full wages which could not be granted automatically. As such, when petitioner himself admitted that he had source of income and in view of judgments referred to above in (2014), the petitioner could not be granted back wages automatically more so when petitioner has admitted that he had source of income from agricultural land although petitioner is held entitled for relief of reinstatement & in continuity in service and seniority as prayed. Ld. Dy. D.A. for the State has contended that delay in raising demand notice in this case disentitled petitioner relief sought for but factually in this case the delay is less than six years and in view of judgment of Hon'ble Apex Court titled as reported in 2013 also the petitioner cannot be deprived of relief sought for in the circumstance of the case. Keeping in view facts and circumstances of case as has come in the evidence, petitioner is held entitled for reinstatement, continuity in service and seniority with all consequential benefits except of back wages. As such, delay would not effect relief sought for by the petitioner in the peculiar circumstances of case as stated above. In view of foregoing, issue no. 2 is answered in affirmative whereas issue no.1 and 3 are decided as discussed above. All the above-stated issues are decided accordingly.

Issue No. 4 :

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

20. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. However, petitioner shall be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. In the peculiar circumstances of the case, the parties are left to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of June, 2018.

K .K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
(Camp at mandi).

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(CAMP AT MANDI)**

Ref. No. : 394/2015
 Date of Institution : 10-09-2015
 Date of Decision : 27-6-2018

Shri Kishori Lal s/o Shri Sukh Ram, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, Dharampur Division, HPPWD, Dharampur, District Mandi, H.P.*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.K. Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Kishori Lal s/o Shri Sukh Ram, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. *vide* demand notice dated 16.06.2009 regarding his alleged illegal termination of service *w.e.f.* 8.7.2005 suffers from delay and latches? If not, whether termination of the services of Shri Kishori Lal s/o Shri Sukh Ram, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, Dharampur Division, H.P.P.W.D. Dharampur, District Mandi, H.P. *w.e.f.* 08.7.2005 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged as daily waged beldar by respondent on 1.9.1999 where he worked upto 7.7.2005 when his services were illegally retrenched on 8.7.2005. Averment made in the claim petition revealed that respondent had not prepared any seniority list and that juniors to the petitioner who worked in the same category had been allowed to remain in continuous service and thus respondent is alleged to have not followed the procedure of retrenchment envisaged under Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act” for brevity) which is based on the doctrine of ‘First come Last go’. It further remains the case of the claimant that persons namely Savitri, Rajesh Kumar, Shashi Lal, Sat Pal, Roshani, Gulab Singh, Devender Kumar, Barfu Ram, Krishan Devi, Achhari Devi, Barfi Devi, Raj Kumar and Ranjeet Singh were juniors to him who

were allowed to continue service and have been regularized on 28.11.2008. It is claimed that despite availability of sufficient work and funds, respondent had retrenched petitioner and several others and that retrenchment was violation of provisions of Sections 25-G, 25-H and 25-N of the Act. It further transpires from the claim petition that Labour Commissioner was notified as "Specified Authority" by Government of Himachal Pradesh *vide* Notification No. 19-8/89-Shram(loose) dated 7.9.1992 for the purpose of Section of 25-N but government in order to facilitate itself got the above said power conferred upon Chief Engineer, Central Zone, Mandi *vide* Notification No. Shram(a)4-1/2005 dated 14.2.2005. It is claimed that Dharampur HPPWD is establishment under Section 25-K and 25-L of the Act which required respondent to seek permission from "Specified Authority" or the appropriate govt. under Section 25-N of the Act while retrenching workmen. It is claimed that Chief Engineer, HPPWD had been illegally appointed as Specified Authority as he himself is head of HPPWD under which respondent worked. It is further stated that respondent in the month of April 2005 after conferment of power upon Chief Engineer served with notice under Section 25- N of the Act to petitioner and several others who had filed CWP no. 486/2005 before the Hon'ble High Court of H.P. challenging Notification dated 14.2.2005 qua conferment of power on Chief Engineer, HPPWD. It is claimed that even after filing writ petition, petitioner and others co-workmen were retrenched. It is alleged that CWP No. 486/2005 was heard by Hon'ble High Court of H.P. in which it was held that such type of notification qua conferment of powers of Specified Authority upon Chief Engineer HPPWD was not sustainable in the eyes of law and thereafter the notification dated 14.2.2005 was rescinded and the powers of Specified Authority was again conferred upon Labour Commissioner, H.P. It is claimed that some of the retrenched workers had raised industrial dispute before Conciliation Officer but conciliation failed and matter was thereafter referred to this court for adjudication and thereafter awards were passed on 30.3.2009 in favour of workmen *vide* which they were given benefit of reinstatement, seniority and back wages. It is alleged that part of back wages was challenged by respondent in Hon'ble High Court of H.P. and the same was decided *vide* common judgment reported in LHLJ 2010 Vol. 2 titled as Executive Engineer, HPPWD Dharampur vs. Dhani Ram/Nihal Chand decided on 13.5.2010 *vide* which instead of 50% back wages, a lump sum compensation of Rs. 50,000/- was granted to the retrenched workmen. It is further alleged that in compliance to the award passed by this court on 30.3.2009, 43 retrenched workmen joined their duties *w.e.f.* 16.9.2009 and even at that time petitioner requested verbally to respondent to reinstate him who was senior to those retrenched workmen engaged in pursuance to award dated 30.3.2009 but respondent did not reengage petitioner. It is also claimed by petitioner that despite visiting office of respondent several times requesting to reinstate but matter was lingered on one pretext to other and also on the ground of the decision for reinstatement was to be taken by the government. Accordingly, petitioner referring to various reported judgments in his claim petition has prayed for his reinstatement along-with back wages, continuity in service from the date of illegal retrenchment/termination along-with other consequential benefits and to any other relief petitioner is found entitled besides regularization as per the provisions of law or from the date when juniors to him have been regularized.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged in October 1999 who had worked upto 7.7.2005 and was retrenched on 8.7.2005 after adopting all requisite codal formalities. It is alleged that some junior daily waged workers were transferred to Dharampur Division from other Division but their seniority lists were not received as such they were retained however after receiving the seniority list, retrenchment notice to those juniors had been served who were surplus and not required by respondent. Further denied that respondent had violated principle of 'First come Last go'. In so far as delegation of powers of Specified Authority to Chief Engineer (B&R) Central Zone, Mandi on 14.2.2005 is concerned, it is contended that Notification dated 14.2.2005 qua delegation of powers to Chief Engineer, North Zone was rescinded and notice for permission for retrenchment of workmen had been obtained after giving

reasonable opportunity of being heard to these workmen. It is also claimed that respondent would reengage the retrenched workmen including petitioner as and when any seasonal work existed however further denied that notification qua conferment of powers to Chief Engineer, HPPWD as "Specified Authority" was made with the object to retrench the petitioner and other co-workers. It is emphatically denied that petitioner ever requested respondent for reengagement rather petitioner had raised demand notice in the year 2010 after about five years. It is also admitted that as per awards of this court, 43 workmen were reengaged but the petitioner had not filed any case before any court and those who had filed case before Labour Court were engaged. It is denied that petitioner was illegally retrenched however admitted that instead of back wages, a lump sum amount of Rs. 50,000/- was ordered to be granted to those workmen who had been retrenched and were parties before the Hon'ble High Court of H.P. in CWP No. 1387/2010 titled as Nihal Chand vs. State of H.P. Accordingly, petition was sought to be dismissed.

5. No rejoinder has been filed by the petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. P1, copies of demand notices of other workers namely Mali Devi, Sita Ram, Basant Singh, Koshalya Devi, Magru Dutt, Nawab Khan, Sanjay Kumar, Kanta Devi, Drompati Devi, Shailander, Raman Kumar, Amar Singh, Manohar Lal, Gobind Ram, Kashmir Singh, Budhi Singh, Achhru Ram, Rajender Pal, Sapindra Devi, Balwant Singh, Dhobi Devi, Krishni Devi, Prem Singh, Kamli Devi, Om Chand, Sunita Devi, Savitri Devi, Ruma Devi, Sheela Devi, Nathu Ram, Roshani Devi, Puran Chand, Pawan Kumar, Kamla Devi, Kunta Devi, Lachhman, Pratap Chand, Mansa Devi, Puran Chand, Kamla Devi, Saroja Devi, Duni Chand respectively Ex. P2 to Ex. P43, copy of demand notice of petitioner Ex. P-44, copy of year-wise mandays of workers Ex. P45 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, Executive Engineer, HPPWD Division Dharampur, tendered/proved his affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed evidence.

7. I have heard the ld. counsel representing parties gone through evidence on record of this case carefully relevant for dispose of present claim petition.

8. From the contentions raised, following issues were framed on 9.12.2015 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 16.6.2009 qua his termination of service during 8.7.2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...OPP.
2. Whether termination of services of the petitioner by the respondent w.e.f. 8.7.2005 is/was improper and unjustified as alleged? ...OPP.
3. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
4. Whether the claim petition is not maintainable in the present form? ...OPR.

Relief.

9. For the reasons to be recorded hereinafter, my findings on the above issues are as follows:—

Issue No.1 :	Discussed
Issue No.2 :	Yes
Issue No.3:	Discussed
Issue No.4:	No
Relief :	Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that respondent RW1 in the witness box has admitted that as per seniority list Ex. P1 workmen shown therein were junior to petitioner and that when petitioner was retrenched these juniors were allowed to remain in service. By such an admission, RW1 has not only admitted retrenchment of petitioner in violation of doctrine of 'Last come First go' envisaged under Section 25-G of the Act but at the same time, he has also admitted relationship with the petitioner for having worked from October, 1999 to 7.7.2005 as daily waged beldar under respondent. The case of the petitioner simplicitor is that he has been illegally retrenched, retaining juniors which was sheer discrimination as the only purpose for retrenchment was to retain the junior who were the workmen of choice of respondent. In so far as award passed in favour of 43 similarly situated workers are concerned, RW1 has admitted that in CWP no.5189/2013 titled as Kanta Devi vs. State of H.P. and Ors. similarly situated workmen as that of petitioner had been reinstated giving benefit of seniority with continuity in service and a lump sum back wages of Rs. 50,000/- . Significantly, RW1 has admitted that order passed Kanta Devi's case (*supra*) has been implemented by respondent besides admitted that Hon'ble High Court of H.P. has held that retrenchment was illegal and not in accordance with law.

12. PW1 Kishori Lal (petitioner) has stepped into witness box as PW1 sworn in affidavit Ex. PW1/A deposed on oath as maintained in claim petition. In cross-examination, he has denied that no junior to him had been retained while retrenching him although admitted that while retrenching, notice was given to him by respondent and compensation was paid to him in the year 2005. Thus, case of the petitioner *qua* retrenchment would squarely fall under Section 25-H of the Act as respondent while retrenching petitioner had not only issued notice but also paid retrenchment compensation in 2005 as admitted by the petitioner. From cross-examination of RW1, it is evident that retrenchment of petitioner was arbitrarily made as juniors to petitioner were retained and not reinstated despite his request RW1 has admitted that respondent had issued demand notice Ex.P-44 prior to raising industrial dispute.

13. Ex. RW1/B is mandays chart relating to petitioner which showed him to have worked for 49 days in the year 1999, 284 days in 2000, 310 days in 2001, 275 days in 2002, 290 days in 2003, 267 days in 2004 and 61 days in 2005 respectively. Since it is admitted case of the party that retrenchment compensation has been paid under Section 25-N of the Act, the provisions of Section 25-F of the Act would not be attracted in the facts and circumstances of the case. Be it stated that Ex. P1 is seniority list of daily waged beldar in respect of Dharampur Division which showed that those workmen who had completed eight years of service as on 31.3.2008 were regularized. Ex. P2 to P 43 are the demand notices issued by several retrenched workers as enumerated in these notices.

With the aid of copies of these notices, ld. Counsel for petitioner has established that petitioner in this case had issued demand notice Ex. P44 on 16.6.2009 whereas all the 43 retrenched workmen had given demand notice later than petitioner and were reinstated by the department in pursuance to order of Hon'ble High Court of H.P as stated above. Thus, while relying upon these demand notices petitioner has also sought relief of reinstatement based on equity as those workmen who were similarly situated have been reinstated with consequential benefits although in pursuance to court order whereas ld. Dy. D.A. representing respondent has stated that although respondent had issued demand notice in less than five years from date of his retrenchment yet for the delay in raising demand notice, the petitioner is not entitled to relief sought for.

14. Ld. Dy. D.A. representing respondent has placed reliance upon the judgment of Hon'ble Apex Court reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh**. In this judgment Hon'ble Apex Court has held that delay in raising industrial dispute is certainly important aspect/circumstance which labour court has to keep in mind while exercising discretion at the time of giving final relief. In para Nos. (20) and (21) of the judgment (*supra*) it has been held that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. In the case before Hon'ble Apex Court (2013) workman concerned had worked merely for 286 days and raised industrial dispute in 1992 whose service had been terminated in 1986 and had thus raised industrial dispute after **six years** from date of termination. The Hon'ble Apex Court has held that compensation awarded by Single Judge of the Hon'ble High Court was too low and awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum. In this judgment criteria was prescribed when compensation would be appropriate relief instead of engagement. On the other hand, ld. Counsel for petitioner has placed reliance upon judgment of Hon'ble High Court of Punjab & Haryana titled as **Naval Singh vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in **[2018 (157) FLR 746]** and the relevant para is reproduced below:

“Termination-of-workmen-Appeal-Appellant also deserves to be granted similar relief- Which has been granted by State to other workmen, whose services retrenched at same time-Services of all other workmen were regularized-The appellant should not be discriminated.....”

15. Relying upon the judgment (2018), ld. Counsel for petitioner has vehemently contended that all the 43 co-workmen including the petitioner who had been retrenched were similarly situated and have now been engaged in pursuance to court order *vide* which relief of reinstatement in service and lump sum compensation of Rs. 50,000/- had been granted. Since the petitioner as well as co-workmen reinstated are similarly situated and that petitioner has given reasonable explanation for delay in approaching this court for redressal of his grievance, the petitioner would in equity entitled to similar relief as has been granted to other co-workmen earlier who had although issued various demands notices referred to above later than petitioner. Thus, it cannot be stated that petitioner was negligent or had caused delay in moving before the labour authorities. Accordingly, it is held that petitioner like other co-workmen would also be entitled to the same relief in view of judgment of titled as **Naval Singh vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in **[2018 (157) FLR 746]** as well as judgment dated 20.12.2012 passed in **Kanta Devi Vs. State of H.P. & Ors.** in CWP No.5189/2012. The case of petitioner gets further strengthens from order dated 13.5.2010 titled as **The Executive Engineer, Dharampur HPPWD Dharampur Vs. Dhani Ram** in CWP No.1365/2010. In such circumstances, the judgment of Hon'ble Apex Court (2013) is not at all attracted in as it merely provides guidelines and factors to be considered by court before granting final relief but that does not in any manner prescribe “**all possible aspects and circumstances**” and in the case in hand

having different facts and applying principle of equity also petitioner can be granted same relief by reinstatement in service as given to other co-workmen as stated above and other consequential benefits except back wages as petitioner himself had admitted in cross examination that he had cultivable land and as such he cannot be stated to have remained unemployed from date of illegal termination.

16. I have gone through the above said judgment, evidence relied upon by the parties and of the view that judgment (2013) of Hon'ble Apex Court in question does not prohibit this court to take into consideration all relevant circumstances while granting final relief to the petitioner. It may not be erroneous to mention here that the Hon'ble Apex Court has not provided any **straight jacket formula** showing some specific ground where to deny reinstatement in service rather various factors which must weigh in the mind of this court while granting final relief to petitioner. In the case in hand, petitioner had served notice after less than **five years** who had established that respondent had violated Section 25-G of the Act by not following rightful procedure while retrenching petitioner as stated above. Not only this, the seniority list Ex. P1 relied upon by petitioner in unambiguous terms established that junior workmen to petitioner who had been retrenched have been reinstated in pursuance to order of Hon'ble High Court of H.P. which would not in any manner eclipse claim of petitioner from getting relief of reinstatement and other consequential benefit. Although RW1 has denied that petitioner had ever approached him for re-engagement and that similar plea has been maintained in reply but in cross-examination RW1 has shown his ignorance if petitioner had requested him orally or in writing for re-engagement besides specifically admitted that those co-workmen in whose favour award passed have been engaged. Thus, when RW1 has given evasive reply to question on request of petitioner for re-engagement, it is to be read in favour of the petitioner by holding that petitioner had approached respondent for reengagement as RW1 being contesting respondent was required to know if petitioner had requested for re-engagement verbally or by in writing and if he was sure that petitioner had not requested him for re-engagement as claimed by petitioner, he ought to have refused the same. In view of foregoing discussions, this court is left with no option but to hold that petitioner had been illegally retrenched by respondent and was not reengaged despite 43 co-workers who were similarly situated had been ordered to be reengaged *vide* Award dated 30.3.2009.

17. In so far as claim of petitioner *qua* back wages is concerned, suffice would be to state here that PW1 in his cross-examination has admitted that he had cultivable land from which he had income and thus he could not be stated to have remained without any income ever since his termination. Ld. Dy. D.A. representing respondent/State has contended with vehemence that full back wages should not be granted mechanically. In this regard judgment of Hon'ble Apex Court reported in **2014 (140) FLR 901 (SC)** titled as **Bharat Sanchar Nigam Ltd. vs. Bhurumal** is quite relevant which provides factors to be considered while granting full wages which could not be granted automatically. As such, when petitioner himself admitted that he had source of income and in view of judgments referred to above in **(2014)**, the petitioner could not be granted back wages automatically moreso when petitioner has admitted that he had source of income from agricultural land although petitioner is held entitled for relief of reinstatement & in continuity in service and seniority as prayed. Ld. Dy. D.A. for the State has contended that delay in raising demand notice in this case disentitled petitioner relief sought for but factually in this case the delay is less than six years and in view of judgment of Hon'ble Apex Court titled as reported in **2013** also the petitioner cannot be deprived of relief sought for in the circumstance of the case. Keeping in view facts and circumstances of case as has come in the evidence, petitioner is held entitled for reinstatement, continuity in service and seniority with all consequential benefits except of back wages. As such, delay would not effect relief sought for by the petitioner in the peculiar circumstances of case as stated above. In view of foregoing, issue No. 2 is answered in affirmative whereas issue no.1 and 3 are decided as discussed above. All the above-stated issues are decided accordingly.

Issue No. 4:

18. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

19. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. However, petitioner shall be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. In the peculiar circumstances of the case, the parties are left to bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of June, 2018.

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
(Camp at Mandi).

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(CAMP AT MANDI)**

Ref. No. : 49/2015

Date of Institution : 23-02-2015

Date of Decision : 27-6-2018

Smt. Biasan Devi w/o Shri Sawaru Ram, r/o Village Drahal, P.O. Sidhpur, Tehsil Sarkaghat, District Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, Dharampur Division, HPPWD, Dharampur, District Mandi, H.P.
....*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.K. Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Smt. Biasan Devi w/o Shri Sawaru Ram, r/o Village Drahal, P.O. Sidhpur, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, Dharampur Division, H.P.P.W.D., Dharampur, District Mandi, H.P. vide demand notice dated 01-08-2010 regarding her alleged illegal termination of services *w.e.f.* 09-7-2005 suffers from delay and laches? If not, Whether termination of the services of Smt. Biasan Devi w/o Shri Sawaru Ram, r/o Village Drahal, P.O. Sidhpur, Tehsil Sarkaghat, District Mandi, H.P. *w.e.f.* 09-07-2005 by the Executive Engineer, Dharampur Division, H.P.P.W.D. Dharampur, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. After the receipt of the above stated reference, a corrigendum dated 19th March, 2016 was received from the appropriate government which reads as under:

“In partial modification of this Department’s Notification of even number dated 17.01.2015, the date of termination of services of workman Smt. Biasan Devi w/o Shri Sawaru Ram, r/o Village Drahal, P.O. Sidhpur, Tehsil Sarkaghat, District Mandi, H.P. may be read as “08.7.2005” instead of “09-7-2005”.

3. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

4. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged as daily waged beldar by respondent on 1.1.1999 where she worked upto 7.7.2005 when her services were illegally retrenched on 8.7.2005. Averment made in the claim petition revealed that respondent had not prepared any seniority list and that juniors to the petitioner who worked in the same category had been allowed to remain in continuous service and thus respondent is alleged to have not followed the procedure of retrenchment envisaged under Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act” for brevity) which is based on the doctrine of ‘First come Last go’ It further remains the case of the claimant that persons namely Savitri, Rajesh Kumar, Shashi Lal, Sat Pal, Roshani, Gulab Singh, Devender Kumar, Barfu Ram, Krishan Devi, Achhari Devi, Barfi Devi, Raj Kumar and Ranjeet Singh were juniors to her who were allowed to continue service and have been regularized on 28.11.2008. It is claimed that despite availability of sufficient work and funds, respondent had retrenched petitioner and several others and that retrenchment was violation of provisions of Sections 25-G, 25-H and 25-N of the Act. It further transpires from the claim petition that Labour Commissioner was notified as “Specified Authority” by government of Himachal Pradesh *vide* Notification No.19-8/89-Shram[loose] dated 7.9.1992 for the purpose of Section of 25-N but government in order to facilitate itself got the above said power conferred upon Chief Engineer, Central Zone, Mandi *vide* Notification no.Shram[a]4-1/2005 dated 14.2.2005. It is claimed that Dharampur HPPWD is

establishment under Section 25-K and 25-L of the Act which required respondent to seek permission from "Specified Authority" or the appropriate govt. under Section 25-N of the Act while retrenching workmen. It is claimed that Chief Engineer, HPPWD had been illegally appointed as Specified Authority as he himself is head of HPPWD under which respondent worked. It is further stated that respondent in the month of April, 2005 after conferment of power upon Chief Engineer served with notice under Section 25-N of the Act to petitioner and several others who had filed CWP no. 486/2005 before the Hon'ble High Court of H.P. challenging Notification dated 14.2.2005 *qua* conferment of power on Chief Engineer, HPPWD. It is claimed that even after filing writ petition, petitioner and others co-workmen were retrenched. It is alleged that CWP no.486/2005 was heard by Hon'ble High Court of H.P. in which it was held that such type of notification *qua* conferment of powers of Specified Authority upon Chief Engineer HPPWD was not sustainable in the eyes of law and thereafter the notification dated 14.2.2005 was rescinded and the powers of Specified Authority was again conferred upon Labour Commissioner, H.P. It is claimed that some of the retrenched workers had raised industrial dispute before Conciliation Officer but conciliation failed and matter was thereafter referred to this court for adjudication and thereafter awards were passed on 30.3.2009 in favour of workmen vide which they were given benefit of reinstatement, seniority and back wages. It is alleged that part of back wages was challenged by respondent in Hon'ble High Court of H.P. and the same was decided vide common judgment reported in LHLJ 2010 Vol. 2 titled as Executive Engineer, HPPWD Dharampur vs. Dhani Ram/Nihal Chand decided on 13.5.2010 vide which instead of 50% back wages, a lump sum compensation of Rs.50,000/-was granted to the retrenched workmen. It is further alleged that in compliance to the award passed by this court on 30.3.2009, 43 retrenched workmen joined their duties *w.e.f.* 16.9.2009 and even at that time petitioner requested verbally to respondent to reinstate her who was senior to those retrenched workmen engaged in pursuance to award dated 30.3.2009 but respondent did not re-engage petitioner. It is also claimed by petitioner that despite visiting office of respondent several times requesting to reinstate but matter was lingered on one pretext to other and also on the ground of the decision for reinstatement was to be taken by the government. Accordingly, petitioner referring to various reported judgments in her claim petition has prayed for her reinstatement along-with back wages, continuity in service from the date of illegal retrenchment/termination along-with other consequential benefits and to any other relief petitioner is found entitled besides regularization as per the provisions of law or from the date when juniors to her have been regularized.

5. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged in January, 1999 who had worked upto 7.7.2005 and was retrenched on 8.7.2005 after adopting all requisite codal formalities. It is alleged that some junior daily waged workers were transferred to Dharampur Division from other Division but their seniority lists were not received as such they were retained however after receiving the seniority list, retrenchment notice to those juniors had been served who were surplus and not required by respondent. Further denied that respondent had violated principle of 'First come Last go'. In so far as delegation of powers of Specified Authority to Chief Engineer, (B&R) Central Zone Mandi on 14.2.2005 is concerned, it is contended that Notification dated 14.2.2005 *qua* delegation of powers to Chief Engineer, North Zone was rescinded and notice for permission for retrenchment of workmen had been obtained after giving reasonable opportunity of being heard to these workmen. It is also claimed that respondent would reengage the retrenched workmen including petitioner as and when any seasonal work existed however further denied that notification *qua* conferment of powers to Chief Engineer, HPPWD as "Specified Authority" was made with the object to retrench the petitioner and other co-workers. It is emphatically denied that petitioner ever requested respondent for re-engagement rather petitioner had raised demand notice in the year 2010 after about five years. It is also admitted that as per awards of this court, 43 workmen were re-engaged but the petitioner had not filed any case before any court and those who had filed case before Labour Court were engaged. It is denied that

petitioner was illegally retrenched however admitted that instead of back wages, a lump sum amount of Rs.50,000/- was ordered to be granted to those workmen who had been retrenched and were parties before the Hon'ble High Court of H.P. in CWP No.1387/2010 titled as Nihal Chand vs. State of H.P.. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

7. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. P1, copies of demand notices of other workers namely Mali Devi, Sita Ram, Basant Singh, Koshalya Devi, Magru Dutt, Nawab Khan, Sanjay Kumar, Kanta Devi, Drompati Devi, Shailander, Raman Kumar, Amar Singh, Manohar Lal, Gobind Ram, Kashmir Singh, Budhi Singh, Achhru Ram, Rajender Pal, Sapindra Devi, Balwant Singh, Dhobi Devi, Krishni Devi, Prem Singh, Kamli Devi, Om Chand, Sunita Devi, Savitri Devi, Ruma Devi, Sheela Devi, Nathu Ram, Roshani Devi, Puran Chand, Pawan Kumar, Kamla Devi, Kunta Devi, Lachhman, Pratap Chand, Mansa Devi, Puran Chand, Kamla Devi, Saroja Devi, Duni Chand and Kishori Lal respectively Ex. P2 to Ex. P43, copy of demand notice of petitioner Ex. P-44 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, Executive Engineer, HPPWD Division Dharampur, tendered/proved his affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, copy of notice Ex. RW1/C and closed evidence.

8. I have heard the ld. Counsel representing parties gone through evidence on record of this case carefully relevant for dispose of present claim petition.

9. From the contentions raised, following issues were framed on 8.12.2015 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 01.8.2010 *qua* her termination of service during 9.7.2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...OPP.
2. Whether termination of services of the petitioner by the respondent *w.e.f.* 9.7.2005 is/was improper and unjustified as alleged? ...OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
4. Whether the claim petition is not maintainable in the present form? ...OPR.

Relief.

10. It is pertinent to mention here that *vide* corrigendum dated 19th March, 2016 date of retrenchment was shown as 8.7.2005 instead of 9.7.2005. It has come in the evidence that factually petitioner remained in service till 7.7.2005 and service of petitioner was terminated on next date *i.e.* on 8.7.2005 and not on 9.7.2005 and as such in issues No. 1 and 2 date of termination shall be read as 8.7.2005 and not 9.7.2005 and the findings shall on the basis of date of retrenchment in this case on 8.7.2005.

11. For the reasons to be recorded hereinafter, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : Yes

Issue No. 3: Discussed

Issue No. 4 : No

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 3 :

12. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

13. At the outset, it is apt to mention here that respondent RW1 in the witness box has admitted that as per seniority list Ex. P1 workmen shown therein were junior to petitioner and that when petitioner was retrenched these juniors were allowed to remain in service. By such an admission, RW1 has not only admitted retrenchment of petitioner in violation of doctrine of 'Last come First go' envisaged under Section 25-G of the Act but at the same time, he has also admitted relationship with the petitioner for having worked from January, 1999 to 7.7.2005 as daily waged beldar under respondent. The case of the petitioner simplicitor is that she has been illegally retrenched, retaining juniors which was sheer discrimination as the only purpose for retrenchment was to retain the junior who were the workmen of choice of respondent. In so far as award passed in favour of 43 similarly situated workers are concerned, RW1 has admitted that in CWP no.5189/2013 titled as Kanta Devi vs. State of H.P. and Ors. similarly situated workmen as that of petitioner had been reinstated giving benefit of seniority with continuity in service and a lump sum back wages of Rs.50,000/- . Significantly, RW1 has admitted that order passed Kanta Devi's case (*supra*) has been implemented by respondent besides admitted that Hon'ble High Court of H.P. has held that retrenchment was illegal and not in accordance with law.

14. PW1 Biasan Devi (petitioner) has stepped into witness box as PW1 sworn in affidavit Ex. PW1/A deposed on oath as maintained in claim petition. In cross-examination, she has denied that no junior to her had been retained while retrenching her although admitted that while retrenching, notice was given to her by respondent and compensation was paid to her in the year 2005. Thus, case of the petitioner *qua* retrenchment would squarely fall under Section 25-H of the Act as respondent while retrenching petitioner had not only issued notice but also paid retrenchment compensation in 2005 as admitted by the petitioner. From cross-examination of RW1, it is evident that retrenchment of petitioner was arbitrarily made as juniors to petitioner were retained and not reinstated despite her request RW1 has admitted that respondent had issued demand notice Ex.P-44 prior to raising industrial dispute.

15. Ex. RW1/B is mandays chart relating to petitioner which showed her to have worked for 315½ days in the year 1999, 364 days in 2000, 363 days in 2001, 357 days in 2002, 361 days in 2003, 355 days in 2004 and 171 days in 2005 respectively. Ex. RW1/C is copy of notice under Section 25-N of the Act. As such, when respondent had complied with requirement of Section 25-N of the Act and also paid compensation and as such provisions of Section 25-F would certainly not be attracted in the facts and circumstances of case and it can also be not stated that respondent had not violated Section 25-N of the Act. Be it stated that Ex. P1 is seniority list of daily waged beldar in respect of Dharampur Division which showed that those workmen who had completed eight years of service as on 31.3.2008 were regularized. Ex. P2 to P43 are the demand notices issued by several retrenched workers as enumerated in these notices. With the aid of copies of these notices,

Id. Counsel for petitioner has established that petitioner in this case had issued demand notice Ex. P44 on 01.8.2010 whereas all the 43 retrenched workmen had given demand notice later than petitioner and were reinstated by the department in pursuance to order of Hon'ble High Court of H.P as stated above. Thus, while relying upon these demand notices petitioner has also sought relief of reinstatement based on equity as those workmen who were similarly situated have been reinstated with consequential benefits although in pursuance to court order whereas Id. Dy. D.A. representing respondent has stated that although respondent had issued demand notice in less than five years from date of her retrenchment yet for the delay in raising demand notice, the petitioner is not entitled to relief sought for.

16. Id. Dy. D.A. representing respondent has placed reliance upon the judgment of Hon'ble Apex Court reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh**. In this judgment Hon'ble Apex Court has held that delay in raising industrial dispute is certainly important aspect/circumstance which labour court has to keep in mind while exercising discretion at the time of giving final relief. In para Nos. (20) and (21) of the judgment (*supra*) it has been held that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. In the case before Hon'ble Apex Court (2013) workman concerned had worked merely for 286 days and raised industrial dispute in 1992 whose service had been terminated in 1986 and had thus raised industrial dispute after **six years** from date of termination. The Hon'ble Apex Court has held that compensation awarded by Single Judge of the Hon'ble High Court was too low and awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum. In this judgment criteria was prescribed when compensation would be appropriate relief instead of engagement. On the other hand, Id. Counsel for petitioner has placed reliance upon judgment of Hon'ble High Court of Punjab & Haryana titled as **Naval Singh Vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in [2018 (157) FLR 746] and the relevant para is reproduced below:

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17. Relying upon the judgment (2018), Id. Counsel for petitioner has vehemently contended that all the 43 co-workmen including the petitioner who had been retrenched were similarly situated and have now been engaged in pursuance to court order *vide* which relief of reinstatement in service and lump sum compensation of Rs.50,000/- had been granted. Since the petitioner as well as co-workmen reinstated are similarly situated and that petitioner has given reasonable explanation for delay in approaching this court for redressal of her grievance, the petitioner would in equity entitled to similar relief as has been granted to other co-workmen earlier who had although issued various demands notices referred to above later than petitioner. Thus, it cannot be stated that petitioner was negligent or had caused delay in moving before the labour authorities. Accordingly, it is held that petitioner like other co-workmen would also be entitled to the same relief in view of judgment of titled as **Naval Singh Vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in [2018 (157) FLR 746] as well as judgment dated 20.12.2012 passed in **Kanta Devi Vs. State of H.P. & Ors.** in CWP No.5189/2012. The case of petitioner gets further strengthens from order dated 13.5.2010 titled as **The Executive Engineer, Dharmpur HPPWD Dharmpur Vs. Dhani Ram** in CWP no.1365/2010. In such circumstances, the judgment of Hon'ble Apex Court (2013) is not at all attracted in as it merely provides guidelines and factors to be considered by court before granting final relief but that does not in any manner prescribe “**all possible aspects and circumstances**” and in the case in hand

having different facts and applying principle of equity also petitioner can be granted same relief by reinstatement in service as given to other co-workmen as stated above and other consequential benefits except back wages as petitioner himself had admitted in cross examination that he had cultivable land and as such he cannot be stated to have remained unemployed from date of illegal termination.

18. I have gone through the above said judgment, evidence relied upon by the parties and of the view that judgment (2013) of Hon'ble Apex Court in question does not prohibit this court to take into consideration all relevant circumstances while granting final relief to the petitioner. It may not be erroneous to mention here that the Hon'ble Apex Court has not provided any **straight jacket formula** showing some specific ground where to deny reinstatement in service rather various factors which must weigh in the mind of this court while granting final relief to petitioner. In the case in hand, petitioner had served notice after less than **five years** who had established that respondent had violated Section 25-G of the Act by not following rightful procedure while retrenching petitioner as stated above. Not only this, the seniority list Ex. P1 relied upon by petitioner in unambiguous terms established that junior workmen to petitioner who had been retrenched have been reinstated in pursuance to order of Hon'ble High Court of H.P. which would not in any manner eclipse claim of petitioner from getting relief of reinstatement and other consequential benefit. Although RW1 has denied that petitioner had ever approached him for re-engagement and that similar plea has been maintained in reply but in cross-examination RW1 has shown his ignorance if petitioner had requested him orally or in writing for re-engagement besides specifically admitted that those co-workmen in whose favour award passed have been engaged. Thus, when RW1 has given evasive reply to question on request of petitioner for re-engagement, it is to be read in favour of the petitioner by holding that petitioner had approached respondent for re-engagement as RW1 being contesting respondent was required to know if petitioner had requested for re-engagement verbally or by in writing and if he was sure that petitioner had not requested him for reengagement as claimed by petitioner, he ought to have refused the same. In view of foregoing discussions, this court is left with no option but to hold that petitioner had been illegally retrenched by respondent and was not re-engaged despite 43 co-workers who were similarly situated had been ordered to be re-engaged *vide* Award dated 30.3.2009.

19. In so far as claim of petitioner *qua* back wages is concerned, suffice would be to state here that PW1 in her cross-examination has admitted that he had cultivable land from which he had income and thus he could not be stated to have remained without any income ever since her termination. Ld. Dy. D.A. representing respondent/State has contended with vehemence that full back wages should not be granted mechanically. In this regard judgment of Hon'ble Apex Court reported in **2014 (140) FLR 901 (SC)** titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal** is quite relevant which provides factors to be considered while granting full wages which could not be granted automatically. As such, when petitioner himself admitted that he had source of income and in view of judgments referred to above in **(2014)**, the petitioner could not be granted back wages automatically moreso when petitioner has admitted that he had source of income from agricultural land although petitioner is held entitled for relief of reinstatement & in continuity in service and seniority as prayed. Ld. Dy. D.A. for the State has contended that delay in raising demand notice in this case disentitled petitioner relief sought for but factually in this case the delay is less than six years and in view of judgment of Hon'ble Apex Court titled as reported in **2013** also the petitioner cannot be deprived of relief sought for in the circumstance of the case. Keeping in view facts and circumstances of case as has come in the evidence, petitioner is held entitled for reinstatement, continuity in service and seniority with all consequential benefits except of back wages. As such, delay would not effect relief sought for by the petitioner in the peculiar circumstances of case as stated above. In view of foregoing, issue No. 2 is answered in affirmative whereas issue No. 1 and 3 are decided as discussed above. All the above-stated issues are decided accordingly.

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of her illegal termination **except back wages**. However, petitioner shall be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of June, 2018.

K .K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
(Camp at mandi).

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(CAMP AT MANDI)**

Ref. No. : 57/2015
Date of Institution: 23-02-2015
Date of Decision : 27-6-2018

Smt. Savitri Devi w/o Shri Chaman Lal, r/o Village Kaunsal, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P.Petitioner.

Versus

The Executive Engineer, HPPWD (B&R) Division Dharampur, District Mandi, H.P.
....Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.K. Sharma, Adv.

For the Respondent

: Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Smt. Savitri Devi w/o Shri Chaman Lal, r/o Village Kaunsal, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, District Mandi, H.P. *vide* demand notice dated 23.02.2011 regarding her alleged illegal termination of service *w.e.f.* 19.10.1999 suffers from delay and laches? If not, whether termination of the services of Smt. Savitri Devi w/o Shri Chaman Lal, r/o Village Kaunsal, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, District Mandi, H.P. *w.e.f.* 19.10.1999 without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the worker, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged as daily waged beldar by respondent on 9.7.1998 where she worked upto 18.10.1999 when her services were illegally retrenched on 19.10.1999. Averment made in the claim petition revealed that respondent had not prepared any seniority list and that juniors to the petitioner who worked in the same category had been allowed to remain in continuous service and thus respondent is alleged to have not followed the procedure of retrenchment envisaged under Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act” for brevity) which is based on the doctrine of ‘First come Last go’ It further remains the case of the claimant that persons namely Savitri, Rajesh Kumar, Shashi Lal, Sat Pal, Roshani, Gulab Singh, Devender Kumar, Barfu Ram, Krishan Devi, Achhari Devi, Barfi Devi, Raj Kumar and Ranjeet Singh were juniors to her who were allowed to continue service and have been regularized on 28.11.2008. It is claimed that despite availability of sufficient work and funds, respondent had retrenched petitioner and several others and that retrenchment was violation of provisions of Sections 25-G, 25-H and 25-N of the Act. It is claimed that some of the retrenched workers had raised industrial dispute before Conciliation Officer but conciliation failed and matter was thereafter referred to this court for adjudication and thereafter awards were passed on 30.3.2009 in favour of workmen *vide* which they were given benefit of reinstatement, seniority and back wages. It is alleged that part of back wages was challenged by respondent in Hon’ble High Court of H.P. and the same was decided *vide* common judgment reported in LHLJ 2010 Vol. 2 titled as Executive Engineer, HPPWD Dharampur vs. Dhani Ram/Nihal Chand decided on 13.5.2010 *vide* which instead of 50% back wages, a lump sum compensation of Rs. 50,000/- was granted to the retrenched workmen. It is further alleged that in compliance to the award passed by this court on 30.3.2009, 43 retrenched workmen joined their duties *w.e.f.* 16.9.2009 and even at that time, petitioner requested repeatedly although verbally to respondent to reinstate her who was senior to those retrenched workmen engaged in pursuance to award dated 30.3.2009 but respondent did not re-engage petitioner. It is also claimed by petitioner that despite visiting office of respondent several times requesting to reinstate but matter was lingered on one pretext to other and also on the ground of the decision for reinstatement was to be taken by the government. Accordingly, petitioner referring to various reported judgments in her claim petition has prayed for her reinstatement along-with back wages, continuity in service from the date of illegal retrenchment/termination along-with other consequential benefits and to any

other relief petitioner is found entitled besides regularization as per the provisions of law or from the date when juniors to her have been regularized.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged in July, 1998 who had worked upto October, 1999 and thereafter petitioner had left the job of her own sweet will. Further denied that respondent had violated principle of 'First come Last go'. It is emphatically denied that petitioner ever requested respondent for re-engagement rather petitioner had raised demand notice in the year 2010 after about five years. It is also admitted that as per awards of this court, 43 workmen were re-engaged but the petitioner had not filed any case before any court and those who had filed case before Labour Court were engaged. It is denied that petitioner was illegally retrenched however admitted that instead of back wages, a lump sum amount of Rs.50,000/- was ordered to be granted to those workmen who had been retrenched and were parties before the Hon'ble High Court of H.P. in CWP No.1387/2010 titled as Nihal Chand vs. State of H.P.. Accordingly, petition was sought to be dismissed.

5. No rejoinder has been filed on behalf of petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. P1, copies of demand notices of other workers namely Mali Devi, Sita Ram, Basant Singh, Kashalya Devi, Magru Dutt, Nawab Khan, Sanjay Kumar, Kanta Devi, Drompati Devi, Shailander, Raman Kumar, Amar Singh, Manohar Lal, Gobind Ram, Kashmir Singh, Budhi Singh, Achhru Ram, Rajender Pal, Sapindra Devi, Balwant Singh, Dhobi Devi, Krishni Devi, Prem Singh, Kamli Devi, Om Chand, Sunita Devi, Savitri Devi, Ruma Devi, Sheela Devi, Nathu Ram, Roshani Devi, Puran Chand, Pawan Kumar, Kamla Devi, Kunta Devi, Lachhman, Pratap Chand, Mansa Devi, Puran Chand, Kamla Devi, Saroja Devi, Duni Chand respectively Ex. P2 to Ex. P43, copy of demand notice of petitioner Ex. P-44, copy of year-wise mandays of workers Ex. P45 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, Executive Engineer, HPPWD Division Dharampur, tendered/proved her affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed evidence.

7. I have heard the ld. Counsel representing parties gone through evidence on record of this case carefully relevant for dispose of present claim petition.

8. From the contentions raised, following issues were framed on 23.2.2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 23.2.2011 *qua* her termination of service during 19.10.1999 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...OPP.
2. Whether termination of services of the petitioner by the respondent *w.e.f.* 19.10.1999 is/was improper and unjustified as alleged? ...OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
4. Whether the claim petition is not maintainable in the present form? ...OPR.
Relief.

9. For the reasons to be recorded hereinafter, my findings on the above issues are as follows:—

Issue No.1 :	Discussed
Issue No. 2 :	Yes
Issue No. 3 :	Discussed
Issue No. 4 :	No
Relief :	Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 3:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that respondent RW1 in the witness box has admitted that as per seniority list Ex. P1 workmen shown therein were junior to petitioner and that when petitioner was retrenched these juniors were allowed to remain in service. By such an admission, RW1 has not only admitted retrenchment of petitioner in violation of doctrine of 'Last come First go' envisaged under Section 25-G of the Act but at the same time, he has also admitted relationship with the petitioner for having worked from July, 1998 to 18.10.1999 as daily waged beldar under respondent. The case of the petitioner simplicitor is that she has been illegally retrenched, retaining juniors which was sheer discrimination as the only purpose for retrenchment was to retain the junior who were the workmen of choice of respondent. In so far as award passed in favour of 43 similarly situated workers are concerned, RW1 has admitted that in CWP no.5189/2013 titled as Kanta Devi Vs. State of H.P. and Ors. similarly situated workmen as that of petitioner had been reinstated giving benefit of seniority with continuity in service and a lump sum back wages of Rs.50,000/. Significantly, RW1 has admitted that order passed Kanta Devi's case (*supra*) has been implemented by respondent besides admitted that Hon'ble High Court of H.P. has held that retrenchment was illegal and not in accordance with law.

12. PW1 Savitri Devi (petitioner) has stepped into witness box sworn in affidavit Ex. PW1/A reiterated her claim as maintained in claim petition besides stated that respondent had not prepared any seniority list and that juniors to the petitioner had been allowed to continue. It is evident from affidavit Ex. PW1/A that juniors to the petitioner have been allowed remain in service who had been regularized on 28.11.2008. Thus the allegation of petitioner primarily remains *qua* violation of Section 25-H of the Act as petitioner had been retrenched arbitrarily and juniors were retained in violation of doctrine of 'First come Last go' envisaged under Section 25- G of the Act. Be it stated that RW1 in cross-examination has admitted that co-workmen as shown named in para No. 3 of claim petition were juniors to petitioner which necessarily follows that juniors have been retained and petitioner who was senior has been retrenched violating Section 25-H of the Act.

13. Ex. RW1/B is mandays chart relating to petitioner which showed her to have worked for 167 days in the year 1998 and 268.5 days in 1999 respectively. Be it stated that Ex. P1 is seniority list of daily waged beldar in respect of Dharampur Division which showed that those workmen who had completed eight years of service as on 31.3.2008 were regularized. Ex. P2 to P43 are various demand notices issued by several retrenched workers as enumerated in these notices. With the aid of copies of these notices, Id. Counsel for petitioner has established that petitioner in this case had issued demand notice Ex. P44 on 23.2.2011 whereas all the 43 retrenched workmen had given demand notices later than petitioner and were reinstated by the department in

pursuance to order of Hon'ble High Court of H.P as stated above. Thus, while relying upon these demand notices petitioner has also sought relief of reinstatement based on equity as those workmen who were similarly situated have been reinstated with consequential benefits although in pursuance to court order whereas Id. Dy. D.A. representing respondent has stated that although respondent had issued demand notice in less than five years from date of her retrenchment yet for the delay in raising demand notice, the petitioner is not entitled to relief sought for.

14. Id. Dy. D.A. representing respondent has placed reliance upon the judgment of Hon'ble Apex Court reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**. In this judgment Hon'ble Apex Court has held that delay in raising industrial dispute is certainly important aspect/circumstance which labour court has to keep in mind while exercising discretion while giving final relief. In para Nos. (20) and (21) of the judgment (*supra*) it has been held that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. In the case before Hon'ble Apex Court in judgment 2013 (*supra*) workman concerned had merely worked for 286 days and had raised industrial dispute in 1992 whereas her service had been terminated in 1986 and industrial dispute was raised after **six years** from date of termination. The Hon'ble Apex Court has held that compensation awarded by Single Judge of the Hon'ble High Court was too low and awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum. In this judgment (*supra*) criteria has been laid down by Hon'ble Apex Court **when compensation would be appropriate relief instead of engagement**. On the other hand, reliance has been placed upon judgment of Hon'ble High Court of Punjab & Haryana titled as **Naval Singh vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in **[2018 (157) FLR 746]**, the relevant para is reproduced below:

“Termination-of-workmen-Appeal-Appellant also deserves to be granted similar relief- Which has been granted by State to other workmen, whose services retrenched at same time-**Services of all other workmen were regularized-The appellant should not be discriminated.....”**

15. Relying upon the judgment (2018), Id. Counsel for petitioner has vehemently contended that all the 43 co-workmen including the petitioner who had been retrenched were similarly situated but only 43 have now been engaged in pursuance to court order *vide* which relief of reinstatement in service and lump sum compensation of Rs.50,000/- had been granted. Since the petitioner as well as co-workmen reinstated are similarly situated and that petitioner has given reasonable explanation for delay in approaching this court for redressal of her grievance, **the petitioner would in equity be entitled to similar relief of reinstatement as has been granted to other co-workmen earlier** rather other co-workmen had issued various demands notices referred to above later than petitioner. Thus, it cannot be stated that petitioner was negligent or had caused delay in moving before the labour authorities. Accordingly, it is held that petitioner like other co-workmen would also be entitled to the same relief in view of judgment of titled as **Naval Singh Vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in **[2018 (157) FLR 746]** as well as judgment dated 20.12.2012 passed in **Kanta Devi Vs. State of H.P. & Ors.** in CWP No. 5189/2012. The case of petitioner gets further strengthened from order dated 13.5.2010 titled as **The Executive Engineer, Dharampur HPPWD Dharampur Vs. Dhani Ram** in CWP No.1365/2010. In such circumstances, the judgment of Hon'ble Apex Court (2013) is not at all attracted in it as merely provides guidelines and factors to be considered by court before granting final relief besides this judgment does not postulate **“all possible aspects and circumstances” in granting relief of compensation instead of reinstatement** and in the case in hand has different facts and on the principle of equity also petitioner can be granted similar relief of reinstatement

in service and other consequential benefits although not of back wages, as there is ample evidence on record establishing that petitioner had source of income having cultivable land.

16. I have gone through the above stated judgments, evidence relied upon by the parties and of the view that judgment (2013) of Hon'ble Apex Court in question does not prohibit this court to take into consideration all relevant circumstances while granting final relief to the petitioner. It may not be erroneous to mention here that the Hon'ble Apex Court has not provided any **straight jacket formula** showing some specific ground in which reinstatement in service is to be declined rather various factors which must weigh in the mind of this court have been laid down while granting final relief to petitioner. In the case in hand, petitioner had served notice after **twelve years** from date of termination having established that respondent had violated Section 25-G of the Act by not following rightful procedure of retrenchment based on principle of 'Last come First go' while retrenching petitioner. Not only this, the seniority list Ex. P1 relied upon by petitioner in unambiguous terms established that junior workmen to petitioner who had been retrenched have been reinstated in pursuance to order of Hon'ble High Court of H.P. which would not in any manner eclipse claim of petitioner from getting relief of reinstatement and other consequential benefit. Although RW1 has denied that petitioner had ever approached her for reengagement and that similar plea has been maintained in reply but in cross- examination RW1 has shown ignorance if petitioner had requested her orally or in writing for re-engagement besides specifically admitted that those co-workmen in whose favour award passed have been engaged. Thus, when RW1 has given evasive reply to question on request of petitioner for re-engagement, it is to be read in favour of the petitioner by holding that petitioner had approached respondent for re-engagement as RW1 being contesting respondent was required to know if petitioner had requested for re-engagement verbally or by in writing and if he was sure that petitioner had not requested him for re-engagement as claimed by petitioner, he ought to have refused the same. As such, petitioner is held to be constantly in touch with respondent for reinstatement which had not been done by the respondent despite raised industrial dispute by petitioner.

17. Ld. Counsel for petitioner has contended with vehemence and placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact then no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier and finally raised when despite repeated assurances to absorb the petitioner in govt. department, she was not re-engaged by respondent. Thus, the petition filed by petitioner cannot be stated to be bad on the ground of delay and laches. Even if in this case petitioner had raised demand notice after **twelve years**, yet there is plausible explanation from side of petitioner. Not only that even on the basis of equity being amongst the similarly situated retrenched workmen who had been reinstated as stated above, petitioner too, would be entitled to be given relief of

reinstatement instead of compensation and for said reason also judgment of Hon'ble Apex Court 2013 (*supra*) would not apply as in the case before Hon'ble Apex Court had different facts and circumstances as in the present case. In view of foregoing discussions, this court is left with no option but to hold that petitioner had been illegally retrenched by respondent and was not reengaged despite 43 co-workers who were similarly situated had been ordered to be reengaged *vide* Award dated 30.3.2009. At the cost of reiteration, it is held that due to delay, the claim of petitioner cannot be declined which would be an important circumstance while giving final relief and for the reasons stated in foregoing paragraphs compensation would not be appropriate relief rather petitioner is held entitled for relief of re-engagement in service with other consequential benefits.

18. In so far as claim of petitioner *qua* back wages is concerned, suffice would be to state here that PW1 in her cross-examination has admitted that she had cultivable land from which she had income and thus she could not be stated have remained without any income ever since her termination. Ld. Dy. D.A. representing respondent/State has contended with vehemence that full back wages should not be granted mechanically. In this regard judgment of Hon'ble Apex Court reported in **2014 (140) FLR 901 (SC)** titled as **Bharat Sanchar Nigam Ltd. vs. Bhurumal** is quite relevant which provides factors to be considered while granting full wages which could not be granted automatically. As such, when petitioner herself admitted that she had source of income and in view of judgments referred to above in (2014), the petitioner could not be granted back wages automatically moreso when petitioner has admitted that she had source of income from agricultural land although petitioner is held entitled for relief of reinstatement seniority and continuity in service. Keeping in view peculiar facts and circumstances of case as has come in the evidence, petitioner is held entitled for reinstatement, continuity in service and seniority with all consequential benefits except of back wages. In view of foregoing discussions, issue No. 2 is answered in affirmative whereas issue No. 1 and 3 are decided as discussed above. All the above-stated issues are decided accordingly.

Issue No. 4 :

19. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

20. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of her illegal termination **except back wages**. However, petitioner shall be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. In the peculiar circumstances of the case, the parties are left to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of June, 2018.

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
(Camp at mandi).

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(CAMP AT MANDI)**

Ref. No. : 55/2015
Date of Institution : 23-02-2015
Date of Decision : 27-6-2018

Shri Chand Ram s/o Shri Jonki Ram, r/o Village Chowki, P.O. Mandap, Tehsil Sarkaghat, District Mandi, H.P.Petitioner.

Versus

The Executive Engineer, HPPWD (B&R) Division Dharampur, District Mandi, H.P.Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.K. Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Shri Chand Ram s/o Shri Jonki Ram, r/o Village Chowki, P.O. Mandap, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, District Mandi, H.P. vide demand notice dated 11.04.2010 regarding his alleged illegal termination *w.e.f.* 01.04.1999 suffers from vice of delay and laches? If not, Whether termination of the services of Shri Chand Ram s/o Shri Jonki Ram, r/o Village Chowki, P.O. Mandap, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, District Mandi, H.P. *w.e.f.* 01.04.1999 without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the worker, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged as daily waged beldar by respondent on 1.9.1998 where he worked upto 31.3.1999 when his services were illegally retrenched on 1.4.1999. Averment made in the claim petition revealed that respondent had not prepared any seniority list and that juniors to the petitioner who worked in the same category had been allowed to remain in continuous service and thus respondent is alleged to have not followed the procedure of retrenchment envisaged under Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act" for brevity) which is based on the doctrine of 'First come Last go' It further remains the case of the claimant that persons namely Savitri, Rajesh Kumar, Shashi Lal, Sat Pal, Roshani, Gulab Singh, Devender Kumar, Barfu Ram, Krishan Devi, Achhari Devi, Barfi Devi, Raj Kumar and Ranjeet Singh were juniors to him who were allowed to continue service and have been regularized on 28.11.2008. It is claimed that despite availability of sufficient work and funds, respondent had retrenched petitioner and several others and that retrenchment was violation of provisions of Sections 25-G, 25-H and 25-N of the Act. It is claimed that some of the retrenched workers had raised industrial dispute before Conciliation Officer but conciliation failed and matter was thereafter referred to this court for adjudication and thereafter awards were passed on 30.3.2009 in favour of workmen *vide* which they were given benefit of reinstatement, seniority and back wages. It is alleged that part of back wages was challenged by respondent in Hon'ble High Court of H.P. and the same was decided *vide* common judgment reported in LHLJ 2010 Vol. 2 titled as Executive Engineer, HPPWD Dharmpur vs. Dhani Ram/Nihal Chand decided on 13.5.2010 *vide* which instead of 50% back wages, a lump sum compensation of Rs.50,000/- was granted to the retrenched workmen. It is further alleged that in compliance to the award passed by this court on 30.3.2009, 43 retrenched workmen joined their duties *w.e.f.* 16.9.2009 and even at that time, petitioner requested repeatedly although verbally to respondent to reinstate him who was senior to those retrenched workmen engaged in pursuance to award dated 30.3.2009 but respondent did not reengage petitioner. It is also claimed by petitioner that despite visiting office of respondent several times requesting to reinstate but matter was lingered on one pretext to other and also on the ground of the decision for reinstatement was to be taken by the government. Accordingly, petitioner referring to various reported judgments in his claim petition has prayed for his reinstatement along-with back wages, continuity in service from the date of illegal retrenchment/termination along-with other consequential benefits and to any other relief petitioner is found entitled besides regularization as per the provisions of law or from the date when juniors to him have been regularized.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged in January, 1999 who had worked upto March, 1999 and thereafter petitioner had left the job of his own sweet will. Further denied that respondent had violated principle of 'First come Last go'. It is emphatically denied that petitioner ever requested respondent for re-engagement rather petitioner had raised demand notice in the year 2010 after about five years. It is also admitted that as per awards of this court, 43 workmen were re-engaged but the petitioner had not filed any case before any court and those who had filed case before Labour Court were engaged. It is denied that petitioner was illegally retrenched however admitted that instead of back wages, a lump sum amount of Rs. 50,000/- was ordered to be granted to those workmen who had been retrenched and were parties before the Hon'ble High Court of H.P. in CWP No.1387/2010 titled as Nihal Chand Vs. State of H.P.. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. P1, copies of demand

notices of other workers namely Mali Devi, Sita Ram, Basant Singh, Kashalya Devi, Magru Dutt, Nawab Khan, Sanjay Kumar, Kanta Devi, Drompati Devi, Shailander, Raman Kumar, Amar Singh, Manohar Lal, Gobind Ram, Kashmir Singh, Budhi Singh, Achhru Ram, Rajender Pal, Sapindra Devi, Balwant Singh, Dhobi Devi, Krishni Devi, Prem Singh, Kamli Devi, Om Chand, Sunita Devi, Savitri Devi, Ruma Devi, Sheela Devi, Nathu Ram, Roshani Devi, Puran Chand, Pawan Kumar, Kamla Devi, Kunta Devi, Lachhman, Pratap Chand, Mansa Devi, Puran Chand, Kamla Devi, Saroja Devi, Duni Chand respectively Ex. P2 to Ex. P43, copy of demand notice of petitioner Ex. P-44, copy of year-wise mandays of workers Ex. P45 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, Executive Engineer, HPPWD Division Dharampur, tendered/proved his affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed evidence.

7. I have heard the ld. Counsel representing parties gone through evidence on record of this case carefully relevant for dispose of present claim petition.

8. From the contentions raised, following issues were framed on 8.12.2015 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 11.4.2010 *qua* his termination of service during 01.4.1999 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...OPP.
2. Whether termination of services of the petitioner by the respondent *w.e.f.* 01.4.1999 is/was improper and unjustified as alleged? ...OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
4. Whether the claim petition is not maintainable in the present form? ...OPR.

Relief.

9. For the reasons toe be recorded hereinafter, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that respondent RW1 in the witness box has admitted that as per seniority list Ex. P1 workmen shown therein were junior to petitioner and that when petitioner was retrenched these juniors were allowed to remain in service. By such an admission, RW1 has not only admitted retrenchment of petitioner in violation of doctrine of 'Last come First go' envisaged under Section 25-G of the Act but at the same time, he has also admitted relationship with the petitioner for having worked from January, 1999 to March, 1999 as daily waged beldar under respondent. The case of the petitioner simplicitor is that he has been illegally retrenched, retaining juniors which was sheer discrimination as the only purpose for retrenchment was to retain the junior who were the workmen of choice of respondent. In so far as award passed in favour of 43 similarly situated workers are concerned, RW1 has admitted that in CWP No.5189/2013 titled as *Kanta Devi Vs. State of H.P. and Ors.* similarly situated workmen as that of petitioner had been reinstated giving benefit of seniority with continuity in service and a lump sum back wages of Rs.50,000/- . Significantly, RW1 has admitted that order passed Kanta Devi's case (*supra*) has been implemented by respondent besides admitted that Hon'ble High Court of H.P. has held that retrenchment was illegal and not in accordance with law.

12. PW1 Hamid Khan (petitioner) has stepped into witness box sworn in affidavit Ex. PW1/A reiterated his claim as maintained in claim petition besides stated that respondent had not prepared any seniority list and that juniors to the petitioner had been allowed to continue. It is evident from affidavit Ex. PW1/A that juniors to the petitioner have been allowed remain in service who had been regularized on 28.11.2008. Thus the allegation of petitioner primarily remains *qua* violation of Section 25-H of the Act as petitioner had been retrenched arbitrarily and juniors were retained in violation of doctrine of 'First come Last go' envisaged under Section 25- G of the Act. Be it stated that RW1 in cross-examination has admitted that co-workmen as shown named in para No. 3 of claim petition were juniors to petitioner which necessarily follows that juniors have been retained and petitioner who was senior has been retrenched violating Section 25-H of the Act.

13. Ex. RW1/B is mandays chart relating to petitioner which showed him to have worked for 64½ days in the year 1999. Be it stated that Ex. P1 is seniority list of daily waged beldar in respect of Dharampur Division which showed that those workmen who had completed eight years of service as on 31.3.2008 were regularized. Ex. P2 to P43 are various demand notices issued by several retrenched workers as enumerated in these notices. With the aid of copies of these notices, ld. counsel for petitioner has established that petitioner in this case had issued demand notice Ex. P44 on 11.4.2010 whereas all the 43 retrenched workmen had given demand notices later than petitioner and were reinstated by the department in pursuance to order of Hon'ble High Court of H.P. as stated above. Thus, while relying upon these demand notices petitioner has also sought relief of reinstatement based on equity as those workmen who were similarly situated have been reinstated with consequential benefits although in pursuance to court order whereas ld. Dy. D.A. representing respondent has stated that although respondent had issued demand notice in less than five years from date of his retrenchment yet for the delay in raising demand notice, the petitioner is not entitled to relief sought for.

14. Ld. Dy. D.A. representing respondent has placed reliance upon the judgment of Hon'ble Apex Court reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**. In this judgment Hon'ble Apex Court has held that delay in raising industrial dispute is certainly important aspect/circumstance which labour court has to keep in mind while exercising discretion while giving final relief. In para Nos. (20) and (21) of the judgment (*supra*) it has been held that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. In the case before Hon'ble Apex Court in judgment 2013 (*supra*) workman concerned had merely worked

for 286 days and had raised industrial dispute in 1992 whereas his service had been terminated in 1986 and industrial dispute was raised after **six years** from date of termination. The Hon'ble Apex Court has held that compensation awarded by Single Judge of the Hon'ble High Court was too low and awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum. In this judgment (*supra*) criteria has been laid down by Hon'ble Apex Court **when compensation would be appropriate relief instead of engagement**. On the other hand, reliance has been placed upon judgment of Hon'ble High Court of Punjab & Haryana titled as **Naval Singh Vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in [2018 (157) FLR 746], the relevant para is reproduced below:

“Termination-of-workmen-Appeal-Appellant also deserves to be granted similar relief- Which has been granted by State to other workmen, whose services retrenched at same time-**Services of all other workmen were regularized-The appellant should not be discriminated.....**”

15. Relying upon the judgment (2018), ld. Counsel for petitioner has vehemently contended that all the 43 co-workmen including the petitioner who had been retrenched were similarly situated but only 43 have now been engaged in pursuance to court order *vide* which relief of reinstatement in service and lump sum compensation of Rs.50,000/- had been granted. Since the petitioner as well as co-workmen reinstated are similarly situated and that petitioner has given reasonable explanation for delay in approaching this court for redressal of his grievance, **the petitioner would in equity be entitled to similar relief of reinstatement as has been granted to other co-workmen earlier** rather other co-workmen had issued various demands notices referred to above later than petitioner. Thus, it cannot be stated that petitioner was negligent or had caused delay in moving before the labour authorities. Accordingly, it is held that petitioner like other co-workmen would also be entitled to the same relief in view of judgment of titled as **Naval Singh vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in [2018 (157) FLR 746] as well as judgment dated 20.12.2012 passed in **Kanta Devi Vs. State of H.P. & Ors.** in CWP no.5189/2012. The case of petitioner gets further strengthened from order dated 13.5.2010 titled as **The Executive Engineer, Dharampur HPPWD Dharampur vs. Dhani Ram** in CWP No.1365/2010. In such circumstances, the judgment of Hon'ble Apex Court (2013) is not at all attracted in it as merely provides guidelines and factors to be considered by court before granting final relief besides this judgment does not postulate **“all possible aspects and circumstances” in granting relief of compensation instead of reinstatement** and in the case in hand has different facts and on the principle of equity also petitioner can be granted similar relief of reinstatement in service and other consequential benefits although not of back wages, as there is ample evidence on record establishing that petitioner had source of income having cultivable land.

16. I have gone through the above stated judgments, evidence relied upon by the parties and of the view that judgment (2013) of Hon'ble Apex Court in question does not prohibit this court to take into consideration all relevant circumstances while granting final relief to the petitioner. It may not be erroneous to mention here that the Hon'ble Apex Court has not provided any **straight jacket formula** showing some specific ground in which reinstatement in service is to be declined rather various factors which must weigh in the mind of this court have been laid down while granting final relief to petitioner. In the case in hand, petitioner had served notice after **eight years** from date of termination having established that respondent had violated Section 25-G of the Act by not following rightful procedure of retrenchment based on principle of ‘Last come First go’ while retrenching petitioner. Not only this, the seniority list Ex. P1 relied upon by petitioner in unambiguous terms established that junior workmen to petitioner who had been retrenched have been reinstated in pursuance to order of Hon'ble High Court of H.P. which would not in any manner eclipse claim of petitioner from getting relief of reinstatement and other consequential benefit. Although RW1 has denied that petitioner had ever approached him for re-engagement and

that similar plea has been maintained in reply but in cross-examination RW1 has shown ignorance if petitioner had requested him orally or in writing for re-engagement besides specifically admitted that those co-workmen in whose favour award passed have been engaged. Thus, when RW1 has given evasive reply to question on request of petitioner for reengagement, it is to be read in favour of the petitioner by holding that petitioner had approached respondent for re-engagement as RW1 being contesting respondent was required to know if petitioner had requested for reengagement verbally or by in writing and if he was sure that petitioner had not requested him for reengagement as claimed by petitioner, he ought to have refused the same. As such, petitioner is held to be constantly in touch him with respondent for reinstatement which had not been done by the respondent despite raised industrial dispute by petitioner.

17. Ld. Counsel for petitioner has contended with vehemence and placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact then no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not re-engaged by respondent. Thus, the petition filed by petitioner cannot be stated to be bad on the ground of delay and laches. Even if in this case petitioner had raised demand notice after **eleven years**, yet there is plausible explanation from side of petitioner. Not only that even on the basis of equity being amongst the similarly situated retrenched workmen who had been reinstated as stated above, petitioner too, would be entitled to be given relief of reinstatement instead of compensation and for said reason also judgment of Hon'ble Apex Court 2013 (*supra*) would not apply as in the case before Hon'ble Apex Court had different facts and circumstances as in the present case. In view of foregoing discussions, this court is left with no option but to hold that petitioner had been illegally retrenched by respondent and was not reengaged despite 43 co-workers who were similarly situated had been ordered to be reengaged vide Award dated 30.3.2009. At the cost of reiteration, it is held that due to delay, the claim of petitioner cannot be declined which would be an important circumstance while giving final relief and for the reasons stated in foregoing paragraphs compensation would not be appropriate relief rather petitioner is held entitled for relief of re-engagement in service with other consequential benefits.

18. In so far as claim of petitioner *qua* back wages is concerned, suffice would be to state here that PW1 in his cross-examination has admitted that he had cultivable land from which he had income and thus he could not be stated have remained without any income ever since his termination. Ld. Dy. D.A. representing respondent/State has contended with vehemence that full back wages should not be granted mechanically. In this regard judgment of Hon'ble Apex Court reported in **2014 (140) FLR 901 (SC)** titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal** is

quite relevant which provides factors to be considered while granting full wages which could not be granted automatically. As such, when petitioner himself admitted that he had source of income and in view of judgments referred to above in (2014), the petitioner could not be granted back wages automatically more so when petitioner has admitted that he had source of income from agricultural land although petitioner is held entitled for relief of reinstatement seniority and continuity in service. Keeping in view peculiar facts and circumstances of case as has come in the evidence, petitioner is held entitled for reinstatement, continuity in service and seniority with all consequential benefits except of back wages. In view of foregoing discussions, issue No. 2 is answered in affirmative whereas issue No. 1 and 3 are decided as discussed above. All the above-stated issues are decided accordingly.

Issue No. 4 :

19. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

20. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. However, petitioner shall be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. In the peculiar circumstances of the case, the parties are left to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of June, 2018.

K .K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
(Camp at mandi).

**IN THE COURT OF SHEI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(CAMP AT MANDI)**

Ref. No. : 53/2015
Date of Institution : 23-02-2015
Date of Decision : 27-6-2018

Shri Bhajan Singh s/o Shri Sher Singh, r/o Village Seoh, P.O. Seoh, Tehsil Sarkaghat,
District Mandi, H.P.Petitioner.

Versus

The Executive Engineer, HPPWD (B&R) Division Dharampur, District Mandi, H.P.
....Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.K. Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Shri Bhajan Singh s/o Shri Sher Singh, r/o Village Seoh, P.O. Seoh, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Enginer, H.P.P.W.D. (B&R) Division, Dharampur, District Mandi, H.P. *vide* demand notice dated 01.04.2010 regarding his alleged illegal termination of service *w.e.f.* 31.07.2004 suffers from delay and laches? If not, Whether termination of the services of Shri Bhajan Singh s/o Shri Sher Singh, r/o Village Seoh, P.O. Seoh, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Enginer, H.P.P.W.D. (B&R) Division, Dharampur, District Mandi, H.P. *w.e.f.* 31.07.2004 without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the worker, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged as daily waged beldar by respondent on 4.4.1999 where he worked upto 30.7.2004 when his services were illegally retrenched on 31.7.2004. Averment made in the claim petition revealed that respondent had not prepared any seniority list and that juniors to the petitioner who worked in the same category had been allowed to remain in continuous service and thus respondent is alleged to have not followed the procedure of retrenchment envisaged under Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act” for brevity) which is based on the doctrine of ‘First come Last go’ It further remains the case of the claimant that persons namely Savitri, Rajesh Kumar, Shashi Lal, Sat Pal, Roshani, Gulab Singh, Devender Kumar, Barfu Ram, Krishan Devi, Achhari Devi, Barfi Devi, Raj Kumar and Ranjeet Singh were juniors to him who were allowed to continue service and have been regularized on 28.11.2008. It is claimed that despite availability of sufficient work and funds, respondent had retrenched petitioner and several others and that retrenchment was violation of provisions of Sections 25-G, 25-H and 25-N of the Act. It is claimed that some of the retrenched workers had raised industrial dispute before Conciliation Officer but conciliation failed and matter was thereafter referred to this court for adjudication and thereafter awards were passed on 30.3.2009 in favour of workmen *vide* which they were given benefit of reinstatement, seniority and back wages. It is alleged that part of back wages was challenged by respondent in Hon’ble High Court of H.P. and the same was decided *vide* common

judgment reported in LHLJ 2010 Vol. 2 titled as Executive Engineer, HPPWD Dharampur vs. Dhani Ram/Nihal Chand decided on 13.5.2010 *vide* which instead of 50% back wages, a lump sum compensation of Rs. 50,000/- was granted to the retrenched workmen. It is further alleged that in compliance to the award passed by this court on 30.3.2009, 43 retrenched workmen joined their duties *w.e.f.* 16.9.2009 and even at that time petitioner requested verbally to respondent to reinstate him who was senior to those retrenched workmen engaged in pursuance to award dated 30.3.2009 but respondent did not re-engage petitioner. It is also claimed by petitioner that despite visiting office of respondent several times requesting to reinstate but matter was lingered on one pretext to other and also on the ground of the decision for reinstatement was to be taken by the government. Accordingly, petitioner referring to various reported judgments in his claim petition has prayed for his reinstatement along-with back wages, continuity in service from the date of illegal retrenchment/termination along-with other consequential benefits and to any other relief petitioner is found entitled besides regularization as per the provisions of law or from the date when juniors to him have been regularized.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged in April, 1999 who had worked upto February, 2004 and was retrenched on February, 2004 after adopting all requisite codal formalities. It is alleged that some junior daily waged workers were transferred to Dharampur Division from other Division but their seniority lists were not received as such they were retained however after receiving the seniority list, retrenchment notice to those juniors had been served who were surplus and not required by respondent. Further denied that respondent had violated principle of 'First come Last go'. It is emphatically denied that petitioner ever requested respondent for reengagement rather petitioner had raised demand notice in the year 2010 after about five years. It is also admitted that as per awards of this court, 43 workmen were reengaged but the petitioner had not filed any case before any court and those who had filed case before Labour Court were engaged. It is denied that petitioner was illegally retrenched however admitted that instead of back wages, a lump sum amount of Rs.50,000/- was ordered to be granted to those workmen who had been retrenched and were parties before the Hon'ble High Court of H.P. in CWP No.1387/2010 titled as Nihal Chand *Vs.* State of H.P.. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. P1, copies of demand notices of other workers namely Mali Devi, Sita Ram, Basant Singh, Koshalya Devi, Magru Dutt, Nawab Khan, Sanjay Kumar, Kanta Devi, Drompati Devi, Shailander, Raman Kumar, Amar Singh, Manohar Lal, Gobind Ram, Kashmir Singh, Budhi Singh, Achhru Ram, Rajender Pal, Sapindra Devi, Balwant Singh, Dhobi Devi, Krishni Devi, Prem Singh, Kamli Devi, Om Chand, Sunita Devi, Savitri Devi, Ruma Devi, Sheela Devi, Nathu Ram, Roshani Devi, Puran Chand, Pawan Kumar, Kamla Devi, Kunta Devi, Lachhman, Pratap Chand, Mansa Devi, Puran Chand, Kamla Devi, Saroja Devi, Duni Chand respectively Ex. P2 to Ex. P43, copy of demand notice of petitioner Ex. P-44, copy of year-wise mandays of workers Ex. P45 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, Executive Engineer, HPPWD Division Dharampur, tendered/proved his affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed evidence.

7. I have heard the Id. Counsel representing parties gone through evidence on record of this case carefully relevant for dispose of present claim petition.

8. From the contentions raised, following issues were framed on 9.12.2015 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 01.4.2010 *qua* his termination of service during 31.7.2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...OPP.
2. Whether termination of services of the petitioner by the respondent *w.e.f.* 31.7.2004 is/was improper and unjustified as alleged? ...OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
4. Whether the claim petition is not maintainable in the present form? ...OPR.

Relief.

9. For the reasons to be recorded hereinafter, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2: Yes

Issue No.3: Discussed

Issue No.4: No

Relief: Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that respondent RW1 in the witness box has admitted that as per seniority list Ex. P1 workmen shown therein were junior to petitioner and that when petitioner was retrenched these juniors were allowed to remain in service. By such an admission, RW1 has not only admitted retrenchment of petitioner in violation of doctrine of 'Last come First go' envisaged under Section 25-G of the Act but at the same time, he has also admitted relationship with the petitioner for having worked from April, 1999 to 30.7.2004 as daily waged beldar under respondent. The case of the petitioner simplicitor is that he has been illegally retrenched, retaining juniors which was sheer discrimination as the only purpose for retrenchment was to retain the junior who were the workmen of choice of respondent. In so far as award passed in favour of 43 similarly situated workers are concerned, RW1 has admitted that in CWP no.5189/2013 titled as Kanta Devi *Vs.* State of H.P. and Ors. similarly situated workmen as that of petitioner had been reinstated giving benefit of seniority with continuity in service and a lump sum back wages of Rs.50,000/. Significantly, RW1 has admitted that order passed Kanta Devi's case (*supra*) has been implemented by respondent besides admitted that Hon'ble High Court of H.P. has held that retrenchment was illegal and not in accordance with law.

12. PW1 Bjajan Singh (petitioner) has stepped into witness box as PW1 sworn in affidavit Ex. PW1/A deposed on oath as maintained in claim petition. In cross-examination, he has denied

that no junior to him had been retained while retrenching him although admitted that while retrenching, notice was given to him by respondent and compensation was paid to him in the year 2005. Thus, case of the petitioner *qua* retrenchment would squarely fall under Section 25-H of the Act as respondent while retrenching petitioner had not only issued notice but also paid retrenchment compensation in 2005 as admitted by the petitioner. From cross-examination of RW1, it is evident that retrenchment of petitioner was arbitrarily made as juniors to petitioner were reinstated but despite repeated request of petitioner, respondent did not re-engage him although demand notice Ex. P44 had been issued as admitted by RW1 in cross-examination.

13. Ex. RW1/B is mandays chart relating to petitioner which showed him to have worked for 220 days in the year 1999, 240½ days in 2000, 242 days in 2001, 363 days in 2002, 329 days in 2003 and 153 days in 2004 respectively. Since it is admitted case of the parties that retrenchment compensation has been paid under Section 25-N of the Act, the provisions of Section 25-F of the Act would not be attracted in the facts and circumstances of the case. Be it stated that Ex. P1 is seniority list of daily waged beldar in respect of Dharampur Division which showed that those workmen who had completed eight years of service as on 31.3.2008 were regularized. Ex. P2 to P43 are various demand notices issued by several retrenched workers as enumerated in these notices. With the aid of copies of these notices, ld. Counsel for petitioner has established that petitioner in this case had issued demand notice Ex. P44 on 01.4.2010 whereas all the 43 retrenched workmen had given demand notices later than petitioner and were reinstated by the department in pursuance to order of Hon'ble High Court of H.P as stated above. Thus, while relying upon these demand notices petitioner has also sought relief of reinstatement based on equity as those workmen who were similarly situated have been reinstated with consequential benefits although in pursuance to court order whereas ld. Dy. D.A. representing respondent has stated that although respondent had issued demand notice in less than five years from date of his retrenchment yet for the delay in raising demand notice, the petitioner is not entitled to relief sought for.

14. Ld. Dy. D.A. representing respondent has placed reliance upon the judgment of Hon'ble Apex Court reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**. In this judgment Hon'ble Apex Court has held that delay in raising industrial dispute is certainly important aspect/circumstance which labour court has to keep in mind while exercising discretion while giving final relief. In para Nos. (20) and (21) of the judgment (*supra*) it has been held that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. In the case before Hon'ble Apex Court in judgment 2013 (*supra*) workman concerned had merely worked for 286 days and had raised industrial dispute in 1992 whereas his service had been terminated in 1986 and industrial dispute was raised after **six years** from date of termination. The Hon'ble Apex Court has held that compensation awarded by Single Judge of the Hon'ble High Court was too low and awarded a lump-sum of Rs. 1 lakh along-with interest @ 9% per annum. In this judgment criteria was prescribed when compensation would be appropriate relief instead of engagement. On the other hand, reliance has been placed upon judgment of Hon'ble High Court of Punjab & Haryana titled as **Naval Singh vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in **[2018 (157) FLR 746]**, the relevant para is reproduced below:

“Termination-of-workmen-Appeal-Appellant also deserves to be granted similar relief- Which has been granted by State to other workmen, whose services retrenched at same time-Services of all other workmen were regularized-The appellant should not be discriminated.....”

15. Relying upon the judgment (2018), Id. Counsel for petitioner has vehemently contended that all the 43 co-workmen including the petitioner who had been retrenched were similarly situated and have now been engaged in pursuance to court order *vide* which relief of reinstatement in service and lump sum compensation of Rs.50,000/- had been granted. Since the petitioner as well as co-workmen reinstated are similarly situated and that petitioner has given reasonable explanation for delay in approaching this court for redressal of his grievance, the petitioner would in equity be entitled to similar relief of reinstatement as has been granted to other co-workmen earlier who had although issued various demands notices referred to above later than petitioner. Thus, it cannot be stated that petitioner was negligent or had caused delay in moving before the labour authorities. Accordingly, it is held that petitioner like other co-workmen would also be entitled to the same relief in view of judgment of titled as **Naval Singh vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in [2018 (157) FLR 746] as well as judgment dated 20.12.2012 passed in **Kanta Devi vs. State of H.P. & Ors.** in CWP no.5189/2012. The case of petitioner gets further strengthened from order dated 13.5.2010 titled as **The Executive Engineer, Dharampur HPPWD Dharampur Vs. Dhani Ram** in CWP no.1365/2010. In such circumstances, the judgment of Hon'ble Apex Court (2013) is not at all attracted in as it merely provides guidelines and factors to be considered by court before granting final relief this judgment does not postulate "**all possible aspects and circumstances**" in granting relief of compensation instead of reinstatement and in the case in hand has different facts and on the principle of equity also petitioner can be granted similar relief reinstatement in service and other consequential benefits although not of back wages, as there is ample evidence on record establishing that petitioner had source of income having cultivable land.

16. I have gone through the above stated judgments, evidence relied upon by the parties and of the view that judgment (2013) of Hon'ble Apex Court in question does not prohibit this court to take into consideration all relevant circumstances while granting final relief to the petitioner. It may not be erroneous to mention here that the Hon'ble Apex Court has not provided any **straight jacket formula** showing some specific ground where to deny reinstatement in service rather various factors which must weigh in the mind of this court while determining final relief to petitioner. In the case in hand, petitioner had served notice within five years from date of termination who had established that respondent had violated Section 25-G of the Act by not following rightful procedure while retrenching petitioner as stated above. Not only this, the seniority list Ex. P1 relied upon by petitioner in unambiguous terms established that junior workmen to petitioner who had been retrenched have been reinstated in pursuance to order of Hon'ble High Court of H.P. which would not in any manner eclipse claim of petitioner from getting relief of reinstatement and other consequential benefit. Although RW1 has denied that petitioner had ever approached him for re-engagement and that similar plea has been maintained in reply but in cross-examination RW1 has shown ignorance if petitioner had requested him orally or in writing for re-engagement besides specifically admitted that those co-workmen in whose favour award passed have been engaged. Thus, when RW1 has given evasive reply to question on request of petitioner for re-engagement, it is to be read in favour of the petitioner by holding that petitioner had approached respondent for re-engagement as RW1 being contesting respondent was required to know if petitioner had requested for re-engagement verbally or by in writing and if he was sure that petitioner had not requested him for re-engagement as claimed by petitioner, he ought to have refused the same. In view of foregoing discussions, this court is left with no option but to hold that petitioner had been illegally retrenched by respondent and was not re-engaged despite 43 co-workers who were similarly situated had been ordered to be reengaged *vide* Award dated 30.3.2009.

17. In so far as claim of petitioner *qua* back wages is concerned, suffice would be to state here that PW1 in his cross-examination has admitted that he had cultivable land from which he had income and thus he could not be stated to have remained without any income ever since his

termination. Ld. Dy. D.A. representing respondent/State has contended with vehemence that full back wages should not be granted mechanically. In this regard judgment of Hon'ble Apex Court reported in **2014 (140) FLR 901 (SC)** titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal** is quite relevant which provides factors to be considered while granting full wages which could not be granted automatically. As such, when petitioner himself admitted that he had source of income and in view of judgments referred to above in **(2014)**, the petitioner could not be granted back wages automatically more so when petitioner has admitted that he had source of income from agricultural land although petitioner is held entitled for relief of reinstatement & in continuity in service and seniority as prayed. Ld. Dy. D.A. for the State has contended that delay in raising demand notice in this case disentitled petitioner relief sought for but factually in this case the delay is less than six years and in view of judgment of Hon'ble Apex Court titled as reported in **2013** also the petitioner cannot be deprived of relief sought for in the circumstance of the case. Keeping in view facts and circumstances of case as has come in the evidence, petitioner is held entitled for reinstatement, continuity in service and seniority with all consequential benefits except of back wages. As such, delay would not effect relief sought for by the petitioner in the peculiar circumstances of case as stated above. In view of foregoing, issue No. 2 is answered in affirmative whereas issue no.1 and 3 are decided as discussed above. All the above-stated issues are decided accordingly.

Issue No. 4 :

18. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

19. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. However, petitioner shall be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. In the peculiar circumstances of the case, the parties are left to bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of June, 2018.

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
(Camp at Mandi).

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 52/2015

Date of Institution: 23-02-2015

Date of Decision: 27-6-2018

Shri Hamid Khan s/o Shri Balia Khan, r/o Village Bhadyar, P.O. Brang, Tehsil Sarkaghat, District Mandi, H.P.Petitioner.

Versus

The Executive Engineer, HPPWD (B&R) Division Dharampur, District Mandi, H.P.
.....Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.K. Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Shri Hamid Khan s/o Shri Balia Khan, r/o Village Bhadyar, P.O. Brang, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, District Mandi, H.P. vide demand notice dated 28.01.2009 regarding his alleged illegal termination of service *w.e.f.* 01.02.2001 suffers from vice of delay and laches? If not, whether termination of the services of Shri Hamid Khan s/o Shri Balia Khan, r/o Village Bhadyar, P.O. Brang, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, District Mandi, H.P. *w.e.f.* 01.02.2001 without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the worker, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged as daily waged beldar by respondent on 1.8.1999 where he worked upto 31.1.2001 when his services were illegally retrenched on 1.2.2001. Averment made in the claim petition revealed that respondent had not prepared any seniority list and that juniors to the petitioner who worked in the same category had been allowed to remain in continuous service and thus respondent is alleged to have not followed the procedure of retrenchment envisaged under Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act” for brevity) which is based on the doctrine of ‘First come Last go’. It further remains the case of the claimant that persons namely

Savitri, Rajesh Kumar, Shashi Lal, Sat Pal, Roshani, Gulab Singh, Devender Kumar, Barfu Ram, Krishan Devi, Achhari Devi, Barfi Devi, Raj Kumar and Ranjeet Singh were juniors to him who were allowed to continue service and have been regularized on 28.11.2008. It is claimed that despite availability of sufficient work and funds, respondent had retrenched petitioner and several others and that retrenchment was violation of provisions of Sections 25-G, 25-H and 25-N of the Act. It is claimed that some of the retrenched workers had raised industrial dispute before Conciliation Officer but conciliation failed and matter was thereafter referred to this court for adjudication and thereafter awards were passed on 30.3.2009 in favour of workmen *vide* which they were given benefit of reinstatement, seniority and back wages. It is alleged that part of back wages was challenged by respondent in Hon'ble High Court of H.P. and the same was decided *vide* common judgment reported in LHLJ 2010 Vol. 2 titled as Executive Engineer, HPPWD Dharampur vs. Dhani Ram/Nihal Chand decided on 13.5.2010 *vide* which instead of 50% back wages, a lump sum compensation of Rs.50,000/- was granted to the retrenched workmen. It is further alleged that in compliance to the award passed by this court on 30.3.2009, 43 retrenched workmen joined their duties *w.e.f.* 16.9.2009 and even at that time, petitioner requested repeatedly although verbally to respondent to reinstate him who was senior to those retrenched workmen engaged in pursuance to award dated 30.3.2009 but respondent did not reengage petitioner. It is also claimed by petitioner that despite visiting office of respondent several times requesting to reinstate but matter was lingered on one pretext to other and also on the ground of the decision for reinstatement was to be taken by the government. Accordingly, petitioner referring to various reported judgments in his claim petition has prayed for his reinstatement along-with back wages, continuity in service from the date of illegal retrenchment/termination along-with other consequential benefits and to any other relief petitioner is found entitled besides regularization as per the provisions of law or from the date when juniors to him have been regularized.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged in April, 1999 who had worked upto June, 2001 and thereafter petitioner had left the job of his own sweet will. Further denied that respondent had violated principle of 'First come Last go'. It is emphatically denied that petitioner ever requested respondent for re-engagement rather petitioner had raised demand notice in the year 2010 after about five years. It is also admitted that as per awards of this court, 43 workmen were re-engaged but the petitioner had not filed any case before any court and those who had filed case before Labour Court were engaged. It is denied that petitioner was illegally retrenched however admitted that instead of back wages, a lump sum amount of Rs.50,000/- was ordered to be granted to those workmen who had been retrenched and were parties before the Hon'ble High Court of H.P. in CWP No.1387/2010 titled as Nihal Chand Vs. State of H.P.. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. P1, copies of demand notices of other workers namely Mali Devi, Sita Ram, Basant Singh, Kashalya Devi, Magru Dutt, Nawab Khan, Sanjay Kumar, Kanta Devi, Drompati Devi, Shailander, Raman Kumar, Amar Singh, Manohar Lal, Gobind Ram, Kashmir Singh, Budhi Singh, Achhru Ram, Rajender Pal, Sapindra Devi, Balwant Singh, Dhobi Devi, Krishni Devi, Prem Singh, Kamli Devi, Om Chand, Sunita Devi, Savitri Devi, Ruma Devi, Sheela Devi, Nathu Ram, Roshani Devi, Puran Chand, Pawan Kumar, Kamla Devi, Kunta Devi, Lachhman, Pratap Chand, Mansa Devi, Puran Chand, Kamla Devi, Saroja Devi, Duni Chand respectively Ex. P2 to Ex. P43, copy of demand notice of petitioner Ex. P-44, copy of year-wise mandays of workers Ex. P45 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, Executive Engineer, HPPWD Division Dharampur, tendered/proved his affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed evidence.

7. I have heard the ld. Counsel representing parties gone through evidence on record of this case carefully relevant for dispose of present claim petition.

8. From the contentions raised, following issues were framed on 8.12.2015 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 28.1.2009 *qua* his termination of service during 01.2.2001 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...OPP.
2. Whether termination of services of the petitioner by the respondent *w.e.f.* 01.2.2001 is/was improper and unjustified as alleged? ...OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
4. Whether the claim petition is not maintainable in the present form? ...OPR.

Relief.

9. For the reasons to be recorded hereinafter, my findings on the above issues are as follows:—

Issue No.1 :	Discussed
Issue No. 2 :	Yes
Issue No. 3 :	Discussed
Issue No. 4 :	No
Relief :	Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 3:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that respondent RW1 in the witness box has admitted that as per seniority list Ex. P1 workmen shown therein were junior to petitioner and that when petitioner was retrenched these juniors were allowed to remain in service. By such an admission, RW1 has not only admitted retrenchment of petitioner in violation of doctrine of 'Last come First go' envisaged under Section 25-G of the Act but at the same time, he has also admitted relationship with the petitioner for having worked from January, 1999 to 31.1.2001 as daily waged beldar under respondent. The case of the petitioner simplicitor is that he has been illegally retrenched, retaining juniors which was sheer discrimination as the only purpose for retrenchment was to retain the junior who were the workmen of choice of respondent. In so far as award passed in favour of 43 similarly situated workers are concerned, RW1 has admitted that in CWP No.5189/2013 titled as Kanta Devi Vs. State of H.P. and Ors. similarly situated workmen as that of petitioner had been reinstated giving benefit of seniority with continuity in service and a lump sum

back wages of Rs.50,000/- . Significantly, RW1 has admitted that order passed Kanta Devi's case (*supra*) has been implemented by respondent besides admitted that Hon'ble High Court of H.P. has held that retrenchment was illegal and not in accordance with law.

12. PW1 Hamid Khan (petitioner) has stepped into witness box sworn in affidavit Ex. PW1/A reiterated his claim as maintained in claim petition besides stated that respondent had not prepared any seniority list and that juniors to the petitioner had been allowed to continue. It is evident from affidavit Ex. PW1/A that juniors to the petitioner have been allowed remain in service who had been regularized on 28.11.2008. Thus the allegation of petitioner primarily remains *qua* violation of Section 25-H of the Act as petitioner had been retrenched arbitrarily and juniors were retained in violation of doctrine of 'First come Last go' envisaged under Section 25- G of the Act. Be it stated that RW1 in cross-examination has admitted that co-workmen as shown named in para No.3 of claim petition were juniors to petitioner which necessarily follows that juniors have been retained and petitioner who was senior has been retrenched violating Section 25-H of the Act.

13. Ex. RW1/B is mandays chart relating to petitioner which showed him to have worked for 244½ days in the year 1999, 356½ in 2000 and 177 days in 2001 respectively. Be it stated that Ex. P1 is seniority list of daily waged beldar in respect of Dharampur Division which showed that those workmen who had completed eight years of service as on 31.3.2008 were regularized. Ex. P2 to P43 are various demand notices issued by several retrenched workers as enumerated in these notices. With the aid of copies of these notices, Id. Counsel for petitioner has established that petitioner in this case had issued demand notice Ex. P44 on 28.1.2009 whereas all the 43 retrenched workmen had given demand notices later than petitioner and were reinstated by the department in pursuance to order of Hon'ble High Court of H.P as stated above. Thus, while relying upon these demand notices petitioner has also sought relief of reinstatement based on equity as those workmen who were similarly situated have been reinstated with consequential benefits although in pursuance to court order whereas Id. Dy. D.A. representing respondent has stated that although respondent had issued demand notice in less than five years from date of his retrenchment yet for the delay in raising demand notice, the petitioner is not entitled to relief sought for.

14. Id. Dy. D.A. representing respondent has placed reliance upon the judgment of Hon'ble Apex Court reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**. In this judgment Hon'ble Apex Court has held that delay in raising industrial dispute is certainly important aspect/circumstance which labour court has to keep in mind while exercising discretion while giving final relief. In para Nos. (20) and (21) of the judgment (*supra*) it has been held that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. In the case before Hon'ble Apex Court in judgment 2013 (*supra*) workman concerned had merely worked for 286 days and had raised industrial dispute in 1992 whereas his service had been terminated in 1986 and industrial dispute was raised after **six years** from date of termination. The Hon'ble Apex Court has held that compensation awarded by Single Judge of the Hon'ble High Court was too low and awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum. In this judgment (*supra*) criteria has been laid down by Hon'ble Apex Court **when compensation would be appropriate relief instead of engagement**. On the other hand, reliance has been placed upon judgment of Hon'ble High Court of Punjab & Haryana titled as **Naval Singh Vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in **[2018 (157) FLR 746]**, the relevant para is reproduced below:

"Termination-of-workmen-Appeal-Appellant also deserves to be granted similar relief-which has been granted by State to other workmen, whose services retrenched at same time-**Services of all other workmen were regularized-The appellant should not be discriminated....."**

15. Relying upon the judgment (2018), ld. Counsel for petitioner has vehemently contended that all the 43 co-workmen including the petitioner who had been retrenched were similarly situated but only 43 have now been engaged in pursuance to court order *vide* which relief of reinstatement in service and lump sum compensation of Rs.50,000/- had been granted. Since the petitioner as well as co-workmen reinstated are similarly situated and that petitioner has given reasonable explanation for delay in approaching this court for redressal of his grievance, **the petitioner would in equity be entitled to similar relief of reinstatement as has been granted to other co-workmen earlier** rather other co-workmen had issued various demand notices referred to above later than petitioner. Thus, it cannot be stated that petitioner was negligent or had caused delay in moving before the labour authorities. Accordingly, it is held that petitioner like other co-workmen would also be entitled to the same relief in view of judgment of titled as **Naval Singh Vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in [2018 (157) FLR 746] as well as judgment dated 20.12.2012 passed in **Kanta Devi Vs. State of H.P. & Ors.** in CWP No.5189/20212. The case of petitioner gets further strengthened from order dated 13.5.2010 titled as **The Executive Engineer, Dharampur HPPWD Dharampur vs. Dhani Ram** in CWP No.1365/2010. In such circumstances, the judgment of Hon'ble Apex Court (2013) is not at all attracted in it as merely provides guidelines and factors to be considered by court before granting final relief besides this judgment does not postulate "**all possible aspects and circumstances**" in **granting relief of compensation instead of reinstatement** and in the case in hand has different facts and on the principle of equity also petitioner can be granted similar relief of reinstatement in service and other consequential benefits although not of back wages, as there is ample evidence on record establishing that petitioner had source of income having cultivable land.

16. I have gone through the above stated judgments, evidence relied upon by the parties and of the view that judgment (2013) of Hon'ble Apex Court in question does not prohibit this court to take into consideration all relevant circumstances while granting final relief to the petitioner. It may not be erroneous to mention here that the Hon'ble Apex Court has not provided any **straight jacket formula** showing some specific ground in which reinstatement in service is to be declined rather various factors which must weigh in the mind of this court have been laid down while granting final relief to petitioner. In the case in hand, petitioner had served notice after **eight years** from date of termination having established that respondent had violated Section 25-G of the Act by not following rightful procedure of retrenchment based on principle of 'Last come First go' while retrenching petitioner. Not only this, the seniority list Ex. P1 relied upon by petitioner in unambiguous terms established that junior workmen to petitioner who had been retrenched have been reinstated in pursuance to order of Hon'ble High Court of H.P. which would not in any manner eclipse claim of petitioner from getting relief of reinstatement and other consequential benefit. Although RW1 has denied that petitioner had ever approached him for re-engagement and that similar plea has been maintained in reply but in cross-examination RW1 has shown ignorance if petitioner had requested him orally or in writing for reengagement besides specifically admitted that those co-workmen in whose favour award passed have been engaged. Thus, when RW1 has given evasive reply to question on request of petitioner for re-engagement, it is to be read in favour of the petitioner by holding that petitioner had approached respondent for re-engagement as RW1 being contesting respondent was required to know if petitioner had requested for re-engagement verbally or by in writing and if he was sure that petitioner had not requested him for re-engagement as claimed by petitioner, he ought to have refused the same. As such, petitioner is held to be constantly in touch him with respondent for reinstatement which had not been done by the respondent despite raised industrial dispute by petitioner.

17. Ld. Counsel for petitioner has contended with vehemence and placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In**

Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact then no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not reengaged by respondent. Thus, the petition filed by petitioner cannot be stated to be bad on the ground of delay and laches. Even if in this case petitioner had raised demand notice after **eight years**, yet there is plausible explanation from side of petitioner. Not only that even on the basis of equity being amongst the similarly situated retrenched workmen who had been reinstated as stated above, petitioner too, would be entitled to be given relief of reinstatement instead of compensation and for said reason also judgment of Hon'ble Apex Court 2013 (*supra*) would not apply as in the case before Hon'ble Apex Court had different facts and circumstances as in the present case. In view of foregoing discussions, this court is left with no option but to hold that petitioner had been illegally retrenched by respondent and was not reengaged despite 43 co-workers who were similarly situated had been ordered to be reengaged *vide* Award dated 30.3.2009. At the cost of reiteration, it is held that due to delay, the claim of petitioner cannot be declined which would be an important circumstance while giving final relief and for the reasons stated in foregoing paragraphs compensation would not be appropriate relief rather petitioner is held entitled for relief of reengagement in service with other consequential benefits.

18. In so far as claim of petitioner *qua* back wages is concerned, suffice would be to state here that PW1 in his cross-examination has admitted that he had cultivable land from which he had income and thus he could not be stated have remained without any income ever since his termination. Ld. Dy. D.A. representing respondent/State has contended with vehemence that full back wages should not be granted mechanically. In this regard judgment of Hon'ble Apex Court reported in **2014 (140) FLR 901 (SC)** titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal** is quite relevant which provides factors to be considered while granting full wages which could not be granted automatically. As such, when petitioner himself admitted that he had source of income and in view of judgments referred to above in (2014), the petitioner could not be granted back wages automatically more so when petitioner has admitted that he had source of income from agricultural land although petitioner is held entitled for relief of reinstatement seniority and continuity in service. Keeping in view peculiar facts and circumstances of case as has come in the evidence, petitioner is held entitled for reinstatement, continuity in service and seniority with all consequential benefits except of back wages. In view of foregoing discussions, issue no.2 is answered in affirmative whereas issue No. 1 and 3 are decided as discussed above. All the above-stated issues are decided accordingly.

Issue No. 4 :

19. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright.

Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

20. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. However, petitioner shall be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. In the peculiar circumstances of the case, the parties are left to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of June, 2018.

K .K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
(Camp at Mandi).

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(CAMP AT MANDI)**

Ref No. : 46/2015

Date of Institution : 23-02-2015

Date of Decision : 27-6-2018

Shri Ramesh Chand s/o Shri Ram Ditta, r/o Village Sandehra, P.O. Tihra, Tehsil Sarkaghat,
District Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, B&R Sub Division, HPPWD, Dharampur, District Mandi, H.P.
.....*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.K. Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Shri Ramesh Chand s/o Shri Ram Ditta, r/o Village Sandehra, P.O. Tihra, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, B&R Division, H.P.P.W.D., Dharampur, District Mandi, H.P. *vide* demand notice dated 04-04-2010 regarding his alleged illegal termination of service *w.e.f.* 09-7-2005 suffers from delay and laches? If not, whether termination of the services of Shri Ramesh Chand s/o Shri Ram Ditta, r/o Village Sandehra, P.O. Tihra, Tehsil Sarkaghat, District Mandi, H.P. *w.e.f.* 09-07-2005 by the Executive Engineer, B&R Division, H.P.P.W.D., Dharampur, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. After the receipt of the abovestated reference, a corrigendum dated 19th March, 2016 was received from the appropriate government which reads as under:

“In partial modification of this Department’s Notification of even number dated 17.01.2015, the date of termination of services of workman Shri Ramesh Chand s/o Shri Ram Ditta, r/o Village Sandehra, P.O. Tihra, Tehsil Sarkaghat, District Mandi, H.P. may be read as “08.7.2005” instead of “09-7- 2005”.

3. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

4. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged as daily waged beldar by respondent on 1.1.1999 where he worked upto 7.7.2005 when his services were illegally retrenched on 8.7.2005. Averment made in the claim petition revealed that respondent had not prepared any seniority list and that juniors to the petitioner who worked in the same category had been allowed to remain in continuous service and thus respondent is alleged to have not followed the procedure of retrenchment envisaged under Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act” for brevity) which is based on the doctrine of ‘First come Last go’ It further remains the case of the claimant that persons namely Savitri, Rajesh Kumar, Shashi Lal, Sat Pal, Roshani, Gulab Singh, Devender Kumar, Barfu Ram, Krishan Devi, Achhari Devi, Barfi Devi, Raj Kumar and Ranjeet Singh were juniors to him who were allowed to continue service and have been regularized on 28.11.2008. It is claimed that despite availability of sufficient work and funds, respondent had retrenched petitioner and several others and that retrenchment was violation of provisions of Sections 25-G, 25-H and 25-N of the Act. It further transpires from the claim petition that Labour Commissioner was notified as “Specified Authority” by government of Himachal Pradesh *vide* Notification No.19- 8/89-Shram[loose] dated 7.9.1992 for the purpose of Section of 25-N but government in order to facilitate itself got the above said power conferred upon Chief Engineer, Central Zone, Mandi *vide* Notification no.Shram[a]4-1/2005 dated 14.2.2005. It is claimed that Dharampur HPPWD is establishment under Section 25-K and 25-L of the Act which required respondent to seek permission from “Specified Authority” or the appropriate govt. under Section 25-N of the Act while retrenching workmen. It is claimed that Chief Engineer, HPPWD had been illegally appointed as Specified Authority as he himself is head of HPPWD under which respondent worked.

It is further stated that respondent in the month of April, 2005 after conferment of power upon Chief Engineer served with notice under Section 25-N of the Act to petitioner and several others who had filed CWP No. 486/2005 before the Hon'ble High Court of H.P. challenging Notification dated 14.2.2005 *qua* conferment of power on Chief Engineer, HPPWD. It is claimed that even after filing writ petition, petitioner and others co-workmen were retrenched. It is alleged that CWP no.486/2005 was heard by Hon'ble High Court of H.P. in which it was held that such type of notification *qua* conferment of powers of Specified Authority upon Chief Engineer HPPWD was not sustainable in the eyes of law and thereafter the notification dated 14.2.2005 was rescinded and the powers of Specified Authority was again conferred upon Labour Commissioner, H.P. It is claimed that some of the retrenched workers had raised industrial dispute before Conciliation Officer but conciliation failed and matter was thereafter referred to this court for adjudication and thereafter awards were passed on 30.3.2009 in favour of workmen *vide* which they were given benefit of reinstatement, seniority and back wages. It is alleged that part of back wages was challenged by respondent in Hon'ble High Court of H.P. and the same was decided *vide* common judgment reported in LHLJ 2010 Vol. 2 titled as Executive Engineer, HPPWD Dharampur vs. Dhani Ram/Nihal Chand decided on 13.5.2010 *vide* which instead of 50% back wages, a lump sum compensation of Rs.50,000/- was granted to the retrenched workmen. It is further alleged that in compliance to the award passed by this court on 30.3.2009, 43 retrenched workmen joined their duties *w.e.f.* 16.9.2009 and even at that time petitioner requested verbally to respondent to reinstate him who was senior to those retrenched workmen engaged in pursuance to award dated 30.3.2009 but respondent did not re-engage petitioner. It is also claimed by petitioner that despite visiting office of respondent several times requesting to reinstate but matter was lingered on one pretext to other and also on the ground of the decision for reinstatement was to be taken by the government. Accordingly, petitioner referring to various reported judgments in his claim petition has prayed for his reinstatement along-with back wages, continuity in service from the date of illegal retrenchment/termination along-with other consequential benefits and to any other relief petitioner is found entitled besides regularization as per the provisions of law or from the date when juniors to him have been regularized.

5. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged in January, 1999 who had worked upto 7.7.2005 and was retrenched on 8.7.2005 after adopting all requisite codal formalities. It is alleged that some junior daily waged workers were transferred to Dharampur Division from other Division but their seniority lists were not received as such they were retained however after receiving the seniority list, retrenchment notice to those juniors had been served who were surplus and not required by respondent. Further denied that respondent had violated principle of 'First come Last go'. In so far as delegation of powers of Specified Authority to Chief Engineer, (B&R) Central Zone Mandi on 14.2.2005 is concerned, it is contended that Notification dated 14.2.2005 *qua* delegation of powers to Chief Engineer, North Zone was rescinded and notice for permission for retrenchment of workmen had been obtained after giving reasonable opportunity of being heard to these workmen. It is also claimed that respondent would reengage the retrenched workmen including petitioner as and when any seasonal work existed however further denied that notification *qua* conferment of powers to Chief Engineer, HPPWD as "Specified Authority" was made with the object to retrench the petitioner and other co-workers. It is emphatically denied that petitioner ever requested respondent for re-engagement rather petitioner had raised demand notice in the year 2010 after about five years. It is also admitted that as per awards of this court, 43 workmen were reengaged but the petitioner had not filed any case before any court and those who had filed case before Labour Court were engaged. It is denied that petitioner was illegally retrenched however admitted that instead of back wages, a lump sum amount of Rs. 50,000/- was ordered to be granted to those workmen who had been retrenched and were parties before the Hon'ble High Court of H.P. in CWP No.1387/2010 titled as Nihal Chand Vs. State of H.P.. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. P1, copies of demand notices of other workers namely Mali Devi, Sita Ram, Basant Singh, Koshalya Devi, Magru Dutt, Nawab Khan, Sanjay Kumar, Kanta Devi, Drompati Devi, Shailander, Raman Kumar, Amar Singh, Manohar Lal, Gobind Ram, Kashmir Singh, Budhi Singh, Achhru Ram, Rajender Pal, Sapindra Devi, Balwant Singh, Dhobi Devi, Krishni Devi, Prem Singh, Kamli Devi, Om Chand, Sunita Devi, Savitri Devi, Ruma Devi, Sheela Devi, Nathu Ram, Roshani Devi, Puran Chand, Pawan Kumar, Kamla Devi, Kunta Devi, Lachhman, Pratap Chand, Mansa Devi, Puran Chand, Kamla Devi, Saroja Devi, Duni Chand and Kishori Lal respectively Ex. P2 to Ex. P43, copy of demand notice of petitioner Ex. P-44, copy of year-wise mandays of workers Ex. P45 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, Executive Engineer, HPPWD Division Dharampur, tendered/proved his affidavit Ex.RW1/A, copy of mandays chart Ex. RW1/B and closed evidence.

8. I have heard the ld. counsel representing parties gone through evidence on record of this case carefully relevant for dispose of present claim petition.

9. From the contentions raised, following issues were framed on 8.12.2015 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 4.4.2010 *qua* his termination of service during 9.7.2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...OPP.
2. Whether termination of services of the petitioner by the respondent *w.e.f.* 9.7.2005 is/was improper and unjustified as alleged? ...OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
4. Whether the claim petition is not maintainable in the present form? ...OPR.

Relief.

10. It is pertinent to mention here that *vide* corrigendum dated 19th March, 2016 date of retrenchment was shown as 8.7.2005 instead of 9.7.2005. It has come in the evidence that factually petitioner remained in service till 7.7.2005 and service of petitioner was terminated on next date i.e. on 8.7.2005 and not on 9.7.2005 and as such in issues No. 1 and 2 date of termination shall be read as 8.7.2005 and not 9.7.2005 and the findings shall on the basis of date of retrenchment in this case on 8.7.2005.

11. For the reasons to be recorded hereinafter, my findings on the above issues are as follows:—

- | | |
|--------------|-----------|
| Issue No.1 : | Discussed |
| Issue No.2 : | Yes |
| Issue No.3 : | Discussed |
| Issue No.4: | No |

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 3 :

12. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

13. At the outset, it is apt to mention here that respondent RW1 in the witness box has admitted that as per seniority list Ex. P1 workmen shown therein were junior to petitioner and that when petitioner was retrenched these juniors were allowed to remain in service. By such an admission, RW1 has not only admitted retrenchment of petitioner in violation of doctrine of 'Last come First go' envisaged under Section 25-G of the Act but at the same time, he has also admitted relationship with the petitioner for having worked from January, 1999 to 7.7.2005 as daily waged beldar under respondent. The case of the petitioner simplicitor is that he has been illegally retrenched, retaining juniors which was sheer discrimination as the only purpose for retrenchment was to retain the junior who were the workmen of choice of respondent. In so far as award passed in favour of 43 similarly situated workers are concerned, RW1 has admitted that in CWP No.5189/2013 titled as *Kanta Devi Vs. State of H.P. and Ors.* similarly situated workmen as that of petitioner had been reinstated giving benefit of seniority with continuity in service and a lump sum back wages of Rs.50,000/- . Significantly, RW1 has admitted that order passed Kanta Devi's case (*supra*) has been implemented by respondent besides admitted that Hon'ble High Court of H.P. has held that retrenchment was illegal and not in accordance with law.

14. PW1 Ramesh Chand (petitioner) has stepped into witness box as PW1 sworn in affidavit Ex. PW1/A deposed on oath as maintained in claim petition. In cross-examination, he has denied that no junior to him had been retained while retrenching him although admitted that while retrenching, notice was given to him by respondent and compensation was paid to him in the year 2005. Thus, case of the petitioner *qua* retrenchment would squarely fall under Section 25-H of the Act as respondent while retrenching petitioner had not only issued notice but also paid retrenchment compensation in 2005 as admitted by the petitioner. From cross-examination of RW1, it is evident that retrenchment of petitioner was arbitrarily made as juniors to petitioner were retained and not reinstated despite his request RW1 has admitted that respondent had issued demand notice Ex.P-44 prior to raising industrial dispute.

15. Ex. RW1/B is mandays chart relating to petitioner which showed him to have worked for 284 days in the year 1999, 342 days in 2000, 338½ days in 2001, 365 days in 2002, 354 days in 2003, 276½ days in 2004 and 187 days in 2005 respectively. Since it is admitted case of the party that retrenchment compensation has been paid under Section 25-N of the Act, the provisions of Section 25-F of the Act would not be attracted in the facts and circumstances of the case. Be it stated that Ex. P1 is seniority list of daily waged beldar in respect of Dharampur Division which showed that those workmen who had completed eight years of service as on 31.3.2008 were regularized. Ex. P2 to P 43 are the demand notices issued by several retrenched workers as enumerated in these notices. With the aid of copies of these notices, Id. Counsel for petitioner has established that petitioner in this case had issued demand notice Ex. P44 on 4.4.2010 whereas all the 43 retrenched workmen had given demand notice later than petitioner and were reinstated by the department in pursuance to order of Hon'ble High Court of H.P as stated above. Thus, while relying upon these demand notices petitioner has also sought relief of reinstatement based on equity as those workmen who were similarly situated have been reinstated with consequential benefits although in pursuance to court order whereas Id. Dy. D.A. representing respondent has stated that although respondent had issued demand notice in less than five years from date of his retrenchment yet for the delay in raising demand notice, the petitioner is not entitled to relief sought for.

16. Ld. Dy. D.A. representing respondent has placed reliance upon the judgment of Hon'ble Apex Court reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**. In this judgment Hon'ble Apex Court has held that delay in raising industrial dispute is certainly important aspect/circumstance which labour court has to keep in mind while exercising discretion at the time of giving final relief. In para Nos. (20) and (21) of the judgment (*supra*) it has been held that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. In the case before Hon'ble Apex Court (2013) workman concerned had worked merely for 286 days and raised industrial dispute in 1992 whose service had been terminated in 1986 and had thus raised industrial dispute after **six years** from date of termination. The Hon'ble Apex Court has held that compensation awarded by Single Judge of the Hon'ble High Court was too low and awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum. In this judgment criteria was prescribed when compensation would be appropriate relief instead of engagement. On the other hand, Id. Counsel for petitioner has placed reliance upon judgment of Hon'ble High Court of Punjab & Haryana titled as **Naval Singh Vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in [2018 (157) FLR 746] and the relevant para is reproduced below:

“Termination-of-workmen-Appeal-Appellant also deserves to be granted similar relief- Which has been granted by State to other workmen, whose services retrenched at same time-Services of all other workmen were regularized-The appellant should not be discriminated.....”

17. Relying upon the judgment (2018), Id. Counsel for petitioner has vehemently contended that all the 43 co-workmen including the petitioner who had been retrenched were similarly situated and have now been engaged in pursuance to court order *vide* which relief of reinstatement in service and lump sum compensation of Rs.50,000/- had been granted. Since the petitioner as well as co-workmen reinstated are similarly situated and that petitioner has given reasonable explanation for delay in approaching this court for redressal of his grievance, the petitioner would in equity entitled to similar relief as has been granted to other co-workmen earlier who had although issued various demands notices referred to above later than petitioner. Thus, it cannot be stated that petitioner was negligent or had caused delay in moving before the labour authorities. Accordingly, it is held that petitioner like other co-workmen would also be entitled to the same relief in view of judgment of titled as **Naval Singh Vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in [2018 (157) FLR 746] as well as judgment dated 20.12.2012 passed in **Kanta Devi vs. State of H.P. & Ors.** in CWP no.5189/2012. The case of petitioner gets further strengthens from order dated 13.5.2010 titled as **The Executive Engineer, Dharmpur HPPWD Dharmpur vs. Dhani Ram** in CWP No.1365/2010. In such circumstances, the judgment of Hon'ble Apex Court (2013) is not at all attracted in as it merely provides guidelines and factors to be considered by court before granting final relief but that does not in any manner prescribe “**all possible aspects and circumstances**” and in the case in hand having different facts and applying principle of equity also petitioner can be granted same relief by reinstatement in service as given to other co-workmen as stated above and other consequential benefits except back wages as petitioner himself had admitted in cross examination that he had cultivable land and as such he cannot be stated to have remained unemployed from date of illegal termination.

18. I have gone through the above said judgment, evidence relied upon by the parties and of the view that judgment (2013) of Hon'ble Apex Court in question does not prohibit this court to take into consideration all relevant circumstances while granting final relief to the petitioner. It may not be erroneous to mention here that the Hon'ble Apex Court has not provided any **straight jacket**

formula showing some specific ground where to deny reinstatement in service rather various factors which must weigh in the mind of this court while granting final relief to petitioner. In the case in hand, petitioner had served notice after less than **five years** who had established that respondent had violated Section 25-G of the Act by not following rightful procedure while retrenching petitioner as stated above. Not only this, the seniority list Ex. P1 relied upon by petitioner in unambiguous terms established that junior workmen to petitioner who had been retrenched have been reinstated in pursuance to order of Hon'ble High Court of H.P. which would not in any manner eclipse claim of petitioner from getting relief of reinstatement and other consequential benefit. Although RW1 has denied that petitioner had ever approached him for reengagement and that similar plea has been maintained in reply but in cross-examination RW1 has shown his ignorance if petitioner had requested him orally or in writing for re-engagement besides specifically admitted that those co-workmen in whose favour award passed have been engaged. Thus, when RW1 has given evasive reply to question on request of petitioner for re-engagement, it is to be read in favour of the petitioner by holding that petitioner had approached respondent for re-engagement as RW1 being contesting respondent was required to know if petitioner had requested for re-engagement verbally or by in writing and if he was sure that petitioner had not requested him for re-engagement as claimed by petitioner, he ought to have refused the same. In view of foregoing discussions, this court is left with no option but to hold that petitioner had been illegally retrenched by respondent and was not reengaged despite 43 co-workers who were similarly situated had been ordered to be reengaged vide Award dated 30.3.2009.

19. In so far as claim of petitioner *qua* back wages is concerned, suffice would be to state here that PW1 in his cross-examination has admitted that he had cultivable land from which he had income and thus he could not be stated to have remained without any income ever since his termination. Ld. Dy. D.A. representing respondent/State has contended with vehemence that full back wages should not be granted mechanically. In this regard judgment of Hon'ble Apex Court reported in **2014 (140) FLR 901 (SC)** titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal** is quite relevant which provides factors to be considered while granting full wages which could not be granted automatically. As such, when petitioner himself admitted that he had source of income and in view of judgments referred to above in **(2014)**, the petitioner could not be granted back wages automatically more so when petitioner has admitted that he had source of income from agricultural land although petitioner is held entitled for relief of reinstatement & in continuity in service and seniority as prayed. Ld. Dy. D.A. for the State has contended that delay in raising demand notice in this case disentitled petitioner relief sought for but factually in this case the delay is less than six years and in view of judgment of Hon'ble Apex Court titled as reported in **2013** also the petitioner cannot be deprived of relief sought for in the circumstance of the case. Keeping in view facts and circumstances of case as has come in the evidence, petitioner is held entitled for reinstatement, continuity in service and seniority with all consequential benefits except of back wages. As such, delay would not effect relief sought for by the petitioner in the peculiar circumstances of case as stated above. In view of foregoing, issue No. 2 is answered in affirmative whereas issue No. 1 and 3 are decided as discussed above. All the above-stated issues are decided accordingly.

Issue No. 4 :

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondent is hereby directed to reengage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. However, petitioner shall be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of June, 2018.

K .K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
(Camp at Mandi).

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(CAMP AT MANDI)**

Ref. No. : 59/2015
Date of Institution : 23-02-2015
Date of Decision : 27-6-2018

Smt. Bachani Devi w/o Shri Kalu Ram, r/o Village Dev Bradta, P.O. Chowk, Tehsil Sarkaghat, District Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, HPPWD (B&R) Division Dharampur, District Mandi, H.P.
....*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S. K. Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Smt. Bachani Devi w/o Kalu Ram, r/o Village Dev Bradta, P.O. Chowk, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, District Mandi, H.P. *vide* demand notice dated 23.02.2011 regarding her alleged illegal termination of service *w.e.f.* 01.11.1999 suffers from delay and laches? If not, whether termination of the services of Smt. Bachani Devi w/o Kalu Ram, r/o Village Dev Bradta, P.O. Chowk, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, District Mandi, H.P. *w.e.f.* 01.11.1999 without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the worker, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged as daily waged beldar by respondent on 1.11.1998 where she worked upto 31.10.1999 when her services were illegally retrenched on 1.11.1999. Averment made in the claim petition revealed that respondent had not prepared any seniority list and that juniors to the petitioner who worked in the same category had been allowed to remain in continuous service and thus respondent is alleged to have not followed the procedure of retrenchment envisaged under Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act” for brevity) which is based on the doctrine of ‘First come Last go’ It further remains the case of the claimant that persons namely Savitri, Rajesh Kumar, Shashi Lal, Sat Pal, Roshani, Gulab Singh, Devender Kumar, Barfu Ram, Krishan Devi, Achhari Devi, Barfi Devi, Raj Kumar and Ranjeet Singh were juniors to her who were allowed to continue service and have been regularized on 28.11.2008. It is claimed that despite availability of sufficient work and funds, respondent had retrenched petitioner and several others and that retrenchment was violation of provisions of Sections 25-G, 25-H and 25-N of the Act. It is claimed that some of the retrenched workers had raised industrial dispute before Conciliation Officer but conciliation failed and matter was thereafter referred to this court for adjudication and thereafter awards were passed on 30.3.2009 in favour of workmen *vide* which they were given benefit of reinstatement, seniority and back wages. It is alleged that part of back wages was challenged by respondent in Hon’ble High Court of H.P. and the same was decided *vide* common judgment reported in LHLJ 2010 Vol. 2 titled as Executive Engineer, HPPWD Dharampur Vs. Dhani Ram/Nihal Chand decided on 13.5.2010 *vide* which instead of 50% back wages, a lump sum compensation of Rs.50,000/- was granted to the retrenched workmen. It is further alleged that in compliance to the award passed by this court on 30.3.2009, 43 retrenched workmen joined their duties *w.e.f.* 16.9.2009 and even at that time, petitioner requested repeatedly although verbally to respondent to reinstate her who was senior to those retrenched workmen engaged in pursuance to award dated 30.3.2009 but respondent did not re-engage petitioner. It is also claimed by petitioner that despite visiting office of respondent several times requesting to reinstate but matter was lingered on one pretext to other and also on the ground of the decision for reinstatement was to be taken by the government. Accordingly, petitioner referring to various reported judgments in her claim petition has prayed for her reinstatement along-with back wages, continuity in service from the date of illegal retrenchment/termination along-with other consequential benefits and to any other relief petitioner is found entitled besides regularization as per the provisions of law or from the date when juniors to her have been regularized.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged in December, 1998 who had worked upto October, 1999 and thereafter petitioner had left the job of her own sweet will. Further denied that respondent had violated principle of ‘First come Last go’. It

is emphatically denied that petitioner ever requested respondent for re-engagement rather petitioner had raised demand notice in the year 2010 after about five years. It is also admitted that as per awards of this court, 43 workmen were re-engaged but the petitioner had not filed any case before any court and those who had filed case before Labour Court were engaged. It is denied that petitioner was illegally retrenched however admitted that instead of back wages, a lump sum amount of Rs. 50,000/- was ordered to be granted to those workmen who had been retrenched and were parties before the Hon'ble High Court of H.P. in CWP No.1387/2010 titled as Nihal Chand Vs. State of H.P. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. P1, copies of demand notices of other workers namely Mali Devi, Sita Ram, Basant Singh, Kashalya Devi, Magru Dutt, Nawab Khan, Sanjay Kumar, Kanta Devi, Drompati Devi, Shailander, Raman Kumar, Amar Singh, Manohar Lal, Gobind Ram, Kashmir Singh, Budhi Singh, Achhru Ram, Rajender Pal, Sapindra Devi, Balwant Singh, Dhobi Devi, Krishni Devi, Prem Singh, Kamli Devi, Om Chand, Sunita Devi, Savitri Devi, Ruma Devi, Sheela Devi, Nathu Ram, Roshani Devi, Puran Chand, Pawan Kumar, Kamla Devi, Kunta Devi, Lachhman, Pratap Chand, Mansa Devi, Puran Chand, Kamla Devi, Saroja Devi, Duni Chand respectively Ex. P2 to Ex. P43, copy of demand notice of petitioner Ex. P-44, copy of year-wise mandays of workers Ex. P45 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, Executive Engineer, HPPWD Division Dharampur, tendered/proved her affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed evidence.

7. I have heard the ld. counsel representing parties gone through evidence on record of this case carefully relevant for dispose of present claim petition.

8. From the contentions raised, following issues were framed on 9.12.2015 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 23.2.2011 *qua* her termination of service during 1.11.1999 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...OPP.
2. Whether termination of services of the petitioner by the respondent *w.e.f.* 1.11.1999 is/was improper and unjustified as alleged? ...OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
4. Whether the claim petition is not maintainable in the present form? ...OPR.

Relief.

9. For the reasons to be recorded hereinafter, my findings on the above issues are as follows:—

- | | |
|---------------|-----------|
| Issue No. 1 : | Discussed |
| Issue No. 2 : | Yes |
| Issue No. 3 : | Discussed |

Issue No. 4 : No

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that respondent RW1 in the witness box has admitted that as per seniority list Ex. P1 workmen shown therein were junior to petitioner and that when petitioner was retrenched these juniors were allowed to remain in service. By such an admission, RW1 has not only admitted retrenchment of petitioner in violation of doctrine of 'Last come First go' envisaged under Section 25-G of the Act but at the same time, he has also admitted relationship with the petitioner for having worked from November, 1998 to 31.10.1999 as daily waged beldar under respondent. The case of the petitioner simplicitor is that she has been illegally retrenched, retaining juniors which was sheer discrimination as the only purpose for retrenchment was to retain the junior who were the workmen of choice of respondent. In so far as award passed in favour of 43 similarly situated workers are concerned, RW1 has admitted that in CWP No.5189/2013 titled as Kanta Devi Vs. State of H.P. and Ors. similarly situated workmen as that of petitioner had been reinstated giving benefit of seniority with continuity in service and a lump sum back wages of Rs.50,000/- . Significantly, RW1 has admitted that order passed Kanta Devi's case (*supra*) has been implemented by respondent besides admitted that Hon'ble High Court of H.P. has held that retrenchment was illegal and not in accordance with law.

12. PW1 Bachani Devi (petitioner) has stepped into witness box sworn in affidavit Ex. PW1/A reiterated her claim as maintained in claim petition besides stated that respondent had not prepared any seniority list and that juniors to the petitioner had been allowed to continue. It is evident from affidavit Ex. PW1/A that juniors to the petitioner have been allowed remain in service who had been regularized on 28.11.2008. Thus the allegation of petitioner primarily remains *qua* violation of Section 25-H of the Act as petitioner had been retrenched arbitrarily and juniors were retained in violation of doctrine of 'First come Last go' envisaged under Section 25-G of the Act. Be it stated that RW1 in cross-examination has admitted that co-workmen as shown named in para No. 3 of claim petition were juniors to petitioner which necessarily follows that juniors have been retained and petitioner who was senior has been retrenched violating Section 25-H of the Act.

13. Ex. RW1/B is mandays chart relating to petitioner which showed her to have worked for 30 days in the year 1998 and 268 days in 1999 respectively. Be it stated that Ex. P1 is seniority list of daily waged beldar in respect of Dharampur Division which showed that those workmen who had completed eight years of service as on 31.3.2008 were regularized. Ex. P2 to P43 are various demand notices issued by several retrenched workers as enumerated in these notices. With the aid of copies of these notices, Id. Counsel for petitioner has established that petitioner in this case had issued demand notice Ex. P44 on 23.2.2011 whereas all the 43 retrenched workmen had given demand notices later than petitioner and were reinstated by the department in pursuance to order of Hon'ble High Court of H.P as stated above. Thus, while relying upon these demand notices petitioner has also sought relief of reinstatement based on equity as those workmen who were similarly situated have been reinstated with consequential benefits although in pursuance to court order whereas Id. Dy. D.A. representing respondent has stated that although respondent had issued demand notice in less than five years from date of her retrenchment yet for the delay in raising demand notice, the petitioner is not entitled to relief sought for.

14. Ld. Dy. D.A. representing respondent has placed reliance upon the judgment of Hon'ble Apex Court reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**. In this judgment Hon'ble Apex Court has held that delay in raising industrial dispute is certainly important aspect/circumstance which labour court has to keep in mind while exercising discretion while giving final relief. In para Nos. (20) and (21) of the judgment (*supra*) it has been held that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. In the case before Hon'ble Apex Court in judgment 2013 (*supra*) workman concerned had merely worked for 286 days and had raised industrial dispute in 1992 whereas her service had been terminated in 1986 and industrial dispute was raised after **six years** from date of termination. The Hon'ble Apex Court has held that compensation awarded by Single Judge of the Hon'ble High Court was too low and awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum. In this judgment (*supra*) criteria has been laid down by Hon'ble Apex Court **when compensation would be appropriate relief instead of engagement**. On the other hand, reliance has been placed upon judgment of Hon'ble High Court of Punjab & Haryana titled as **Naval Singh Vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in **[2018 (157) FLR 746]**, the relevant para is reproduced below:

“Termination-of-workmen-Appeal-Appellant also deserves to be granted similar relief- Which has been granted by State to other workmen, whose services retrenched at same time-**Services of all other workmen were regularized-The appellant should not be discriminated.....”**

15. Relying upon the judgment (2018), ld. Counsel for petitioner has vehemently contended that all the 43 co-workmen including the petitioner who had been retrenched were similarly situated but only 43 have now been engaged in pursuance to court order *vide* which relief of reinstatement in service and lump sum compensation of Rs.50,000/- had been granted. Since the petitioner as well as co-workmen reinstated are similarly situated and that petitioner has given reasonable explanation for delay in approaching this court for redressal of her grievance, **the petitioner would in equity be entitled to similar relief of reinstatement as has been granted to other co-workmen earlier** rather other co-workmen had issued various demand notices referred to above later than petitioner. Thus, it cannot be stated that petitioner was negligent or had caused delay in moving before the labour authorities. Accordingly, it is held that petitioner like other co-workmen would also be entitled to the same relief in view of judgment of titled as **Naval Singh Vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in **[2018 (157) FLR 746]** as well as judgment dated 20.12.2012 passed in **Kanta Devi Vs. State of H.P. & Ors.** in CWP No.5189/20212. The case of petitioner gets further strengthened from order dated 13.5.2010 titled as **The Executive Engineer, Dharampur HPPWD Dharampur Vs. Dhani Ram** in CWP No. 1365/2010. In such circumstances, the judgment of Hon'ble Apex Court (2013) is not at all attracted in it as merely provides guidelines and factors to be considered by court before granting final relief besides this judgment does not postulate **“all possible aspects and circumstances” in granting relief of compensation instead of reinstatement** and in the case in hand has different facts and on the principle of equity also petitioner can be granted similar relief of reinstatement in service and other consequential benefits although not of back wages, as there is ample evidence on record establishing that petitioner had source of income having cultivable land.

16. I have gone through the above stated judgments, evidence relied upon by the parties and of the view that judgment (2013) of Hon'ble Apex Court in question does not prohibit this court to take into consideration all relevant circumstances while granting final relief to the petitioner. It may not be erroneous to mention here that the Hon'ble Apex Court has not provided

any **straight jacket formula** showing some specific ground in which reinstatement in service is to be declined rather various factors which must weigh in the mind of this court have been laid down while granting final relief to petitioner. In the case in hand, petitioner had served notice after **eleven years** from date of termination having established that respondent had violated Section 25-G of the Act by not following rightful procedure of retrenchment based on principle of 'Last come First go' while retrenching petitioner. Not only this, the seniority list Ex. P1 relied upon by petitioner in unambiguous terms established that junior workmen to petitioner who had been retrenched have been reinstated in pursuance to order of Hon'ble High Court of H.P. which would not in any manner eclipse claim of petitioner from getting relief of reinstatement and other consequential benefit. Although RW1 has denied that petitioner had ever approached her for re-engagement and that similar plea has been maintained in reply but in cross- examination RW1 has shown ignorance if petitioner had requested her orally or in writing for reengagement besides specifically admitted that those co-workmen in whose favour award passed have been engaged. Thus, when RW1 has given evasive reply to question on request of petitioner for reengagement, it is to be read in favour of the petitioner by holding that petitioner had approached respondent for re-engagement as RW1 being contesting respondent was required to know if petitioner had requested for re-engagement verbally or by in writing and if he was sure that petitioner had not requested him for re-engagement as claimed by petitioner, he ought to have refused the same. As such, petitioner is held to be constantly in touch her with respondent for reinstatement which had not been done by the respondent despite raised industrial dispute by petitioner.

17. Ld. Counsel for petitioner has contended with vehemence and placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garib Ram, Latest HLJ 2007 (H.P.) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact then no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier and finally raised when despite repeated assurances to absorb the petitioner in govt. department, she was not reengaged by respondent. Thus, the petition filed by petitioner cannot be stated to be bad on the ground of delay and laches. Even if in this case petitioner had raised demand notice after **eleven years**, yet there is plausible explanation from side of petitioner. Not only that even on the basis of equity being amongst the similarly situated retrenched workmen who had been reinstated as stated above, petitioner too, would be entitled to be given relief of reinstatement instead of compensation and for said reason also judgment of Hon'ble Apex Court 2013 (*supra*) would not apply as in the case before Hon'ble Apex Court had different facts and circumstances as in the present case. In view of foregoing discussions, this court is left with no option but to hold that petitioner had been illegally retrenched by respondent and was not reengaged despite 43 co-workers who were similarly situated had been ordered to be reengaged *vide* Award dated 30.3.2009. At the cost of reiteration, it is held that due to delay, the claim of petitioner cannot be declined which would be an important circumstance while giving final relief

and for the reasons stated in foregoing paragraphs compensation would not be appropriate relief rather petitioner is held entitled for relief of reengagement in service with other consequential benefits.

18. In so far as claim of petitioner *qua* back wages is concerned, suffice would be to state here that PW1 in her cross-examination has admitted that she had cultivable land from which she had income and thus she could not be stated have remained without any income ever since her termination. Ld. Dy. D.A. representing respondent/State has contended with vehemence that full back wages should not be granted mechanically. In this regard judgment of Hon'ble Apex Court reported in **2014 (140) FLR 901 (SC)** titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal** is quite relevant which provides factors to be considered while granting full wages which could not be granted automatically. As such, when petitioner herself admitted that she had source of income and in view of judgments referred to above in **(2014)**, the petitioner could not be granted back wages automatically moreso when petitioner has admitted that she had source of income from agricultural land although petitioner is held entitled for relief of reinstatement seniority and continuity in service. Keeping in view peculiar facts and circumstances of case as has come in the evidence, petitioner is held entitled for reinstatement, continuity in service and seniority with all consequential benefits except of back wages. In view of foregoing discussions, issue No. 2 is answered in affirmative whereas issues No. 1 and 3 are decided as discussed above. All the above-stated issues are decided accordingly.

Issue No. 4:

19. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

20. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of her illegal termination **except back wages**. However, petitioner shall be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. In the peculiar circumstances of the case, the parties are left to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of June, 2018.

K . K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
(Camp at Mandi).

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 58/2015
 Date of Institution : 23-2-2015
 Date of Decision : 27-6-2018

Smt. Babli Devi w/o Shri Sohan Lal, r/o Village Bahri, P.O. Kot, Tehsil Sarkaghat, District Mandi, H.P.*Petitioner.*

Versus

The Executive Engineer, HPPWD (B&R) Division Dharampur, District Mandi, H.P.
..*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S. K. Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Smt. Babli Devi w/o Shri Sohan Lal, r/o Village Bahri, P.O. Kot, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, District Mandi, H.P. *vide* demand notice dated 01.06.2010 regarding her alleged illegal termination of service *w.e.f.* 01.11.1999 suffers from delay and laches? If not, whether termination of the services of Smt. Babli Devi w/o Shri Sohan Lal, r/o Village Bahri, P.O. Kot, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, District Mandi, H.P. *w.e.f.* 01.11.1999 without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the worker, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged as daily waged beldar by respondent on 1.8.1998 where she worked upto 30.5.1999 when her services were illegally retrenched on 1.6.1999. Averment made in the claim petition revealed that respondent had not prepared any seniority list and that juniors to the petitioner who worked in the same category had been allowed to remain in continuous service and thus respondent is alleged to have not followed the procedure of retrenchment envisaged under Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act” for brevity) which is based on the doctrine of ‘First come Last go’ It further remains the case of the claimant that persons namely Savitri, Rajesh Kumar, Shashi Lal, Sat Pal, Roshani, Gulab Singh, Devender Kumar, Barfu Ram, Krishan Devi, Achhari Devi, Barfi Devi, Raj Kumar and Ranjeet Singh were juniors to her who

were allowed to continue service and have been regularized on 28.11.2008. It is claimed that despite availability of sufficient work and funds, respondent had retrenched petitioner and several others and that retrenchment was violation of provisions of Sections 25-G, 25-H and 25-N of the Act. It is claimed that some of the retrenched workers had raised industrial dispute before Conciliation Officer but conciliation failed and matter was thereafter referred to this court for adjudication and thereafter awards were passed on 30.3.2009 in favour of workmen *vide* which they were given benefit of reinstatement, seniority and back wages. It is alleged that part of back wages was challenged by respondent in Hon'ble High Court of H.P. and the same was decided *vide* common judgment reported in LHLJ 2010 Vol. 2 titled as Executive Engineer, HPPWD Dharampur Vs. Dhani Ram/Nihal Chand decided on 13.5.2010 *vide* which instead of 50% back wages, a lump sum compensation of Rs. 50,000/- was granted to the retrenched workmen. It is further alleged that in compliance to the award passed by this court on 30.3.2009, 43 retrenched workmen joined their duties *w.e.f.* 16.9.2009 and even at that time, petitioner requested repeatedly although verbally to respondent to reinstate her who was senior to those retrenched workmen engaged in pursuance to award dated 30.3.2009 but respondent did not re-engage petitioner. It is also claimed by petitioner that despite visiting office of respondent several times requesting to reinstate but matter was lingered on one pretext to other and also on the ground of the decision for reinstatement was to be taken by the government. Accordingly, petitioner referring to various reported judgments in her claim petition has prayed for her reinstatement along-with back wages, continuity in service from the date of illegal retrenchment/termination along-with other consequential benefits and to any other relief petitioner is found entitled besides regularization as per the provisions of law or from the date when juniors to her have been regularized.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged in August, 1998 who had worked upto May, 1999 and thereafter petitioner had left the job of her own sweet will. Further denied that respondent had violated principle of 'First come Last go'. It is emphatically denied that petitioner ever requested respondent for re-engagement rather petitioner had raised demand notice in the year 2010 after about five years. It is also admitted that as per awards of this court, 43 workmen were re-engaged but the petitioner had not filed any case before any court and those who had filed case before Labour Court were engaged. It is denied that petitioner was illegally retrenched however admitted that instead of back wages, a lump sum amount of Rs. 50,000/- was ordered to be granted to those workmen who had been retrenched and were parties before the Hon'ble High Court of H.P. in CWP No.1387/2010 titled as Nihal Chand Vs. State of H.P.. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. P1, copies of demand notices of other workers namely Mali Devi, Sita Ram, Basant Singh, Kashalya Devi, Magru Dutt, Nawab Khan, Sanjay Kumar, Kanta Devi, Drompati Devi, Shailander, Raman Kumar, Amar Singh, Manohar Lal, Gobind Ram, Kashmir Singh, Budhi Singh, Achhru Ram, Rajender Pal, Sapindra Devi, Balwant Singh, Dhobi Devi, Krishni Devi, Prem Singh, Kamli Devi, Om Chand, Sunita Devi, Savitri Devi, Ruma Devi, Sheela Devi, Nathu Ram, Roshani Devi, Puran Chand, Pawan Kumar, Kamla Devi, Kunta Devi, Lachhman, Pratap Chand, Mansa Devi, Puran Chand, Kamla Devi, Saroja Devi, Duni Chand respectively Ex. P2 to Ex. P43, copy of demand notice of petitioner Ex. P-44, copy of year-wise mandays of workers Ex. P45 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, Executive Engineer, HPPWD Division Dharampur, tendered/proved her affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed evidence.

7. I have heard the ld. Counsel representing parties gone through evidence on record of this case carefully relevant for dispose of present claim petition.

8. From the contentions raised, following issues were framed on 8.12.2015 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 01.6.2010 *qua* her termination of service during 1.1.1999 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...OPP.
2. Whether termination of services of the petitioner by the respondent *w.e.f.* 1.1.1999 is/was improper and unjustified as alleged? ...OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
4. Whether the claim petition is not maintainable in the present form? ...OPR.

Relief.

9. For the reasons toe be recorded hereinafter, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : Yes

Issue No. 3: Discussed

Issue No. 4 : No

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that respondent RW1 in the witness box has admitted that as per seniority list Ex. P1 workmen shown therein were junior to petitioner and that when petitioner was retrenched these juniors were allowed to remain in service. By such an admission, RW1 has not only admitted retrenchment of petitioner in violation of doctrine of 'Last come First go' envisaged under Section 25-G of the Act but at the same time, he has also admitted relationship with the petitioner for having worked from August, 1998 to 30.5.1999 as daily waged beldar under respondent. The case of the petitioner simplicitor is that she has been illegally retrenched, retaining juniors which was sheer discrimination as the only purpose for retrenchment was to retain the junior who were the workmen of choice of respondent. In so far as award passed in favour of 43 similarly situated workers are concerned, RW1 has admitted that in CWP No.5189/2013 titled as Kanta Devi Vs. State of H.P. and Ors. similarly situated workmen as that of petitioner had been reinstated giving benefit of seniority with continuity in service and a lump sum

back wages of Rs. 50,000/- . Significantly, RW1 has admitted that order passed Kanta Devi's case (*supra*) has been implemented by respondent besides admitted that Hon'ble High Court of H.P. has held that retrenchment was illegal and not in accordance with law.

12. PW1 Babli Devi (petitioner) has stepped into witness box sworn in affidavit Ex. PW1/A reiterated her claim as maintained in claim petition besides stated that respondent had not prepared any seniority list and that juniors to the petitioner had been allowed to continue. It is evident from affidavit Ex. PW1/A that juniors to the petitioner have been allowed remain in service who had been regularized on 28.11.2008. Thus the allegation of petitioner primarily remains *qua* violation of Section 25-H of the Act as petitioner had been retrenched arbitrarily and juniors were retained in violation of doctrine of 'First come Last go' envisaged under Section 25- G of the Act. Be it stated that RW1 in cross-examination has admitted that co-workmen as shown named in para No. 3 of claim petition were juniors to petitioner which necessarily follows that juniors have been retained and petitioner who was senior has been retrenched violating Section 25-H of the Act.

13. Ex. RW1/B is mandays chart relating to petitioner which showed her to have worked for 141 days in the year 1998 and 95 days in 1999 respectively. Be it stated that Ex. P1 is seniority list of daily waged beldar in respect of Dharampur Division which showed that those workmen who had completed eight years of service as on 31.3.2008 were regularized. Ex. P2 to P43 are various demand notices issued by several retrenched workers as enumerated in these notices. With the aid of copies of these notices, Id. Counsel for petitioner has established that petitioner in this case had issued demand notice Ex. P44 on 01.6.2010 whereas all the 43 retrenched workmen had given demand notices later than petitioner and were reinstated by the department in pursuance to order of Hon'ble High Court of H.P as stated above. Thus, while relying upon these demand notices petitioner has also sought relief of reinstatement based on equity as those workmen who were similarly situated have been reinstated with consequential benefits although in pursuance to court order whereas Id. Dy. D.A. representing respondent has stated that although respondent had issued demand notice in less than five years from date of her retrenchment yet for the delay in raising demand notice, the petitioner is not entitled to relief sought for.

14. Id. Dy. D.A. representing respondent has placed reliance upon the judgment of Hon'ble Apex Court reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**. In this judgment Hon'ble Apex Court has held that delay in raising industrial dispute is certainly important aspect/circumstance which labour court has to keep in mind while exercising discretion while giving final relief. In para nos. (20) and (21) of the judgment (*supra*) it has been held that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. In the case before Hon'ble Apex Court in judgment 2013 (*supra*) workman concerned had merely worked for 286 days and had raised industrial dispute in 1992 whereas her service had been terminated in 1986 and industrial dispute was raised after **six years** from date of termination. The Hon'ble Apex Court has held that compensation awarded by Single Judge of the Hon'ble High Court was too low and awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum. In this judgment (*supra*) criteria has been laid down by Hon'ble Apex Court **when compensation would be appropriate relief instead of engagement**. On the other hand, reliance has been placed upon judgment of Hon'ble High Court of Punjab & Haryana titled as **Naval Singh Vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in **[2018 (157) FLR 746]**, the relevant para is reproduced below:

"Termination-of-workmen-Appeal-Appellant also deserves to be granted similar relief- Which has been granted by State to other workmen, whose services retrenched at same time-**Services of all other workmen were regularized-The appellant should not be discriminated....."**

15. Relying upon the judgment (2018), ld. Counsel for petitioner has vehemently contended that all the 43 co-workmen including the petitioner who had been retrenched were similarly situated but only 43 have now been engaged in pursuance to court order *vide* which relief of reinstatement in service and lump sum compensation of Rs.50,000/- had been granted. Since the petitioner as well as co-workmen reinstated are similarly situated and that petitioner has given reasonable explanation for delay in approaching this court for redressal of her grievance, **the petitioner would in equity be entitled to similar relief of reinstatement as has been granted to other co-workmen earlier** rather other co-workmen had issued various demands notices referred to above later than petitioner. Thus, it cannot be stated that petitioner was negligent or had caused delay in moving before the labour authorities. Accordingly, it is held that petitioner like other co-workmen would also be entitled to the same relief in view of judgment of titled as **Naval Singh Vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in [2018 (157) FLR 746] as well as judgment dated 20.12.2012 passed in **Kanta Devi vs. State of H.P. & Ors.** in CWP No.5189/2012. The case of petitioner gets further strengthened from order dated 13.5.2010 titled as **The Executive Engineer, Dharampur HPPWD Dharampur Vs. Dhani Ram** in CWP no.1365/2010. In such circumstances, the judgment of Hon'ble Apex Court (2013) is not at all attracted in it as merely provides guidelines and factors to be considered by court before granting final relief besides this judgment does not postulate "**all possible aspects and circumstances**" in **granting relief of compensation instead of reinstatement** and in the case in hand has different facts and on the principle of equity also petitioner can be granted similar relief of reinstatement in service and other consequential benefits although not of back wages, as there is ample evidence on record establishing that petitioner had source of income having cultivable land.

16. I have gone through the above stated judgments, evidence relied upon by the parties and of the view that judgment (2013) of Hon'ble Apex Court in question does not prohibit this court to take into consideration all relevant circumstances while granting final relief to the petitioner. It may not be erroneous to mention here that the Hon'ble Apex Court has not provided any **straight jacket formula** showing some specific ground in which reinstatement in service is to be declined rather various factors which must weigh in the mind of this court have been laid down while granting final relief to petitioner. In the case in hand, petitioner had served notice after **eleven years** from date of termination having established that respondent had violated Section 25-G of the Act by not following rightful procedure of retrenchment based on principle of 'Last come First go' while retrenching petitioner. Not only this, the seniority list Ex. P1 relied upon by petitioner in unambiguous terms established that junior workmen to petitioner who had been retrenched have been reinstated in pursuance to order of Hon'ble High Court of H.P. which would not in any manner eclipse claim of petitioner from getting relief of reinstatement and other consequential benefit. Although RW1 has denied that petitioner had ever approached her for re-engagement and that similar plea has been maintained in reply but in cross- examination RW1 has shown ignorance if petitioner had requested her orally or in writing for re-engagement besides specifically admitted that those co-workmen in whose favour award passed have been engaged. Thus, when RW1 has given evasive reply to question on request of petitioner for re-engagement, it is to be read in favour of the petitioner by holding that petitioner had approached respondent for re-engagement as RW1 being contesting respondent was required to know if petitioner had requested for re-engagement verbally or by in writing and if he was sure that petitioner had not requested him for re-engagement as claimed by petitioner, he ought to have refused the same. As such, petitioner is held to be constantly in touch her with respondent for reinstatement which had not been done by the respondent despite raised industrial dispute by petitioner.

17. Ld. Counsel for petitioner has contended with vehemence and placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In**

Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact then no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier and finally raised when despite repeated assurances to absorb the petitioner in govt. department, she was not reengaged by respondent. Thus, the petition filed by petitioner cannot be stated to be bad on the ground of delay and laches. Even if in this case petitioner had raised demand notice after **six years**, yet there is plausible explanation from side of petitioner. Not only that even on the basis of equity being amongst the similarly situated retrenched workmen who had been reinstated as stated above, petitioner too, would be entitled to be given relief of reinstatement instead of compensation and for said reason also judgment of Hon'ble Apex Court 2013 (*supra*) would not apply as in the case before Hon'ble Apex Court had different facts and circumstances as in the present case. In view of foregoing discussions, this court is left with no option but to hold that petitioner had been illegally retrenched by respondent and was not reengaged despite 43 co-workers who were similarly situated had been ordered to be reengaged *vide* Award dated 30.3.2009. At the cost of reiteration, it is held that due to delay, the claim of petitioner cannot be declined which would be an important circumstance while giving final relief and for the reasons stated in foregoing paragraphs compensation would not be appropriate relief rather petitioner is held entitled for relief of re-engagement in service with other consequential benefits.

18. In so far as claim of petitioner qua back wages is concerned, suffice would be to state here that PW1 in her cross-examination has admitted that she had cultivable land from which she had income and thus she could not be stated have remained without any income ever since her termination. Ld. Dy. D.A. representing respondent/State has contended with vehemence that full back wages should not be granted mechanically. In this regard judgment of Hon'ble Apex Court reported in **2014 (140) FLR 901 (SC)** titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal** is quite relevant which provides factors to be considered while granting full wages which could not be granted automatically. As such, when petitioner herself admitted that she had source of income and in view of judgments referred to above in (2014), the petitioner could not be granted back wages automatically more so when petitioner has admitted that she had source of income from agricultural land although petitioner is held entitled for relief of reinstatement seniority and continuity in service. Keeping in view peculiar facts and circumstances of case as has come in the evidence, petitioner is held entitled for reinstatement, continuity in service and seniority with all consequential benefits except of back wages. In view of foregoing discussions, issue No. 2 is answered in affirmative whereas issue No. 1 and 3 are decided as discussed above. All the above-stated issues are decided accordingly.

Issue No. 4 :

19. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright.

Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

20. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of her illegal termination **except back wages**. However, petitioner shall be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. In the peculiar circumstances of the case, the parties are left to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of June, 2018.

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
(Camp at Mandi).

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(CAMP AT MANDI)**

Ref No. : 56/2015
Date of Institution : 23-02-2015
Date of Decision : 27-6-2018

Smt. Ruma Devi w/o Shri Raj Mal, r/o Village Karola, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P.Petitioner.

Versus

The Executive Engineer, HPPWD (B&R) Division Dharampur, District Mandi, H.P.
..Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.K. Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Smt. Ruma Devi w/o Shri Raj Mal, r/o Village Karola, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, District Mandi, H.P. *vide* demand notice dated 05.04.2010 regarding her alleged illegal termination of service *w.e.f.* 18.07.2004 suffers from delay and laches? If not, Whether termination of the services of Smt. Ruma Devi w/o Shri Raj Mal, r/o Village Karola, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, District Mandi, H.P. *w.e.f.* 18.7.2004 without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the worker, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged as daily waged beldar by respondent on 9.11.1998 where she worked upto 17.7.2004 when her services were illegally retrenched on 18.7.2004. Averment made in the claim petition revealed that respondent had not prepared any seniority list and that juniors to the petitioner who worked in the same category had been allowed to remain in continuous service and thus respondent is alleged to have not followed the procedure of retrenchment envisaged under Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act” for brevity) which is based on the doctrine of ‘First come Last go’ It further remains the case of the claimant that persons namely Savitri, Rajesh Kumar, Shashi Lal, Sat Pal, Roshani, Gulab Singh, Devender Kumar, Barfu Ram, Krishan Devi, Achhari Devi, Barfi Devi, Raj Kumar and Ranjeet Singh were juniors to her who were allowed to continue service and have been regularized on 28.11.2008. It is claimed that despite availability of sufficient work and funds, respondent had retrenched petitioner and several others and that retrenchment was violation of provisions of Sections 25-G, 25-H and 25-N of the Act. It is claimed that some of the retrenched workers had raised industrial dispute before Conciliation Officer but conciliation failed and matter was thereafter referred to this court for adjudication and thereafter awards were passed on 30.3.2009 in favour of workmen *vide* which they were given benefit of reinstatement, seniority and back wages. It is alleged that part of back wages was challenged by respondent in Hon’ble High Court of H.P. and the same was decided *vide* common judgment reported in LHLJ 2010 Vol. 2 titled as Executive Engineer, HPPWD Dharampur Vs. Dhani Ram/Nihal Chand decided on 13.5.2010 *vide* which instead of 50% back wages, a lump sum compensation of Rs. 50,000/- was granted to the retrenched workmen. It is further alleged that in compliance to the award passed by this court on 30.3.2009, 43 retrenched workmen joined their duties *w.e.f.* 16.9.2009 and even at that time, petitioner requested repeatedly although verbally to respondent to reinstate her who was senior to those retrenched workmen engaged in pursuance to award dated 30.3.2009 but respondent did not re-engage petitioner. It is also claimed by petitioner that despite visiting office of respondent several times requesting to reinstate but matter was lingered on one pretext to other and also on the ground of the decision for reinstatement was to be taken by the government. Accordingly, petitioner referring to various reported judgments in her claim petition has prayed for her reinstatement along-with back wages, continuity in service from the date of illegal retrenchment/termination along-with other consequential benefits and to any other relief petitioner is found entitled besides regularization as per the provisions of law or from the date when juniors to her have been regularized.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged in November, 1998 who had worked upto February, 2004 and was retrenched on February, 2004 after adopting all requisite codal formalities. It is alleged that some junior daily waged workers were transferred to Dharampur Division from other Division but their seniority lists were not received as such they were retained however after receiving the seniority list, retrenchment notice to those juniors had been served who were surplus and not required by respondent. Further denied that respondent had violated principle of 'First come Last go'. It is emphatically denied that petitioner ever requested respondent for re-engagement rather petitioner had raised demand notice in the year 2010 after about five years. It is also admitted that as per awards of this court, 43 workmen were reengaged but the petitioner had not filed any case before any court and those who had filed case before Labour Court were engaged. It is denied that petitioner was illegally retrenched however admitted that instead of back wages, a lump sum amount of Rs. 50,000/- was ordered to be granted to those workmen who had been retrenched and were parties before the Hon'ble High Court of H.P. in CWP No.1387/2010 titled as Nihal Chand *Vs.* State of H.P.. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. P1, copies of demand notices of other workers namely Mali Devi, Sita Ram, Basant Singh, Kashalya Devi, Magru Dutt, Nawab Khan, Sanjay Kumar, Kanta Devi, Drompati Devi, Shailander, Raman Kumar, Amar Singh, Manohar Lal, Gobind Ram, Kashmir Singh, Budhi Singh, Achhru Ram, Rajender Pal, Sapindra Devi, Balwant Singh, Dhobi Devi, Krishni Devi, Prem Singh, Kamli Devi, Om Chand, Sunita Devi, Savitri Devi, Ruma Devi, Sheela Devi, Nathu Ram, Roshani Devi, Puran Chand, Pawan Kumar, Kamla Devi, Kunta Devi, Lachhman, Pratap Chand, Mansa Devi, Puran Chand, Kamla Devi, Saroja Devi, Duni Chand respectively Ex. P2 to Ex. P43, copy of demand notice of petitioner Ex. P-44, copy of year-wise mandays of workers Ex. P45 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, Executive Engineer, HPPWD Division Dharampur, tendered/proved her affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed evidence.

7. I have heard the ld. Counsel representing parties gone through evidence on record of this case carefully relevant for dispose of present claim petition.

8. From the contentions raised, following issues were framed on 9.12.2015 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 05.4.2010 *qua* her termination of service during 18.7.2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...OPP.
2. Whether termination of services of the petitioner by the respondent *w.e.f.* 18.7.2004 is/was improper and unjustified as alleged? ...OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
4. Whether the claim petition is not maintainable in the present form? ...OPR.

Relief.

9. For the reasons to be recorded hereinafter, my findings on the above issues are as follows:—

Issue No. 1 :	Discussed
Issue No. 2 :	Yes
Issue No. 3 :	Discussed
Issue No. 4 :	No
Relief. :	Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that respondent RW1 in the witness box has admitted that as per seniority list Ex. P1 workmen shown therein were junior to petitioner and that when petitioner was retrenched these juniors were allowed to remain in service. By such an admission, RW1 has not only admitted retrenchment of petitioner in violation of doctrine of 'Last come First go' envisaged under Section 25-G of the Act but at the same time, he has also admitted relationship with the petitioner for having worked from November, 1998 to 17.7.2004 as daily waged beldar under respondent. The case of the petitioner simplicitor is that she has been illegally retrenched, retaining juniors which was sheer discrimination as the only purpose for retrenchment was to retain the junior who were the workmen of choice of respondent. In so far as award passed in favour of 43 similarly situated workers are concerned, RW1 has admitted that in CWP No.5189/2013 titled as *Kanta Devi Vs. State of H.P. and Ors.* similarly situated workmen as that of petitioner had been reinstated giving benefit of seniority with continuity in service and a lump sum back wages of Rs. 50,000/- . Significantly, RW1 has admitted that order passed Kanta Devi's case (*supra*) has been implemented by respondent besides admitted that Hon'ble High Court of H.P. has held that retrenchment was illegal and not in accordance with law.

12. PW1 Ruma Devi (petitioner) has stepped into witness box as PW1 sworn in affidavit Ex. PW1/A deposed on oath as maintained in claim petition. In cross-examination, she has denied that no junior to her had been retained while retrenching her although admitted that while retrenching, notice was given to her by respondent and compensation was paid to her in the year 2005. Thus, case of the petitioner *qua* retrenchment would squarely fall under Section 25-H of the Act as respondent while retrenching petitioner had not only issued notice but also paid retrenchment compensation in 2005 as admitted by the petitioner. From cross-examination of RW1, it is evident that retrenchment of petitioner was arbitrarily made as juniors to petitioner were reinstated but despite repeated request of petitioner, respondent did not re-engage her although demand notice Ex. P44 had been issued as admitted by RW1 in cross-examination.

13. Ex. RW1/B is mandays chart relating to petitioner which showed her to have worked for 49 days in the year 1998, 326 days 1999, 360 days in 2000, 351 days in 2001, 361 days in 2002, 354 days in 2003 and 110 days in 2004 respectively. Since it is admitted case of the parties that retrenchment compensation has been paid under Section 25-N of the Act, the provisions of Section 25-F of the Act would not be attracted in the facts and circumstances of the case. Be it stated that

Ex. P1 is seniority list of daily waged beldar in respect of Dharampur Division which showed that those workmen who had completed eight years of service as on 31.3.2008 were regularized. Ex. P2 to P43 are various demand notices issued by several retrenched workers as enumerated in these notices. With the aid of copies of these notices, ld. Counsel for petitioner has established that petitioner in this case had issued demand notice Ex. P44 on 05.4.2010 whereas all the 43 retrenched workmen had given demand notices later than petitioner and were reinstated by the department in pursuance to order of Hon'ble High Court of H.P as stated above. Thus, while relying upon these demand notices petitioner has also sought relief of reinstatement based on equity as those workmen who were similarly situated have been reinstated with consequential benefits although in pursuance to court order whereas ld. Dy. D.A. representing respondent has stated that although respondent had issued demand notice in less than five years from date of her retrenchment yet for the delay in raising demand notice, the petitioner is not entitled to relief sought for.

14. Ld. Dy. D.A. representing respondent has placed reliance upon the judgment of Hon'ble Apex Court reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh**. In this judgment Hon'ble Apex Court has held that delay in raising industrial dispute is certainly important aspect/circumstance which labour court has to keep in mind while exercising discretion while giving final relief. In para Nos. (20) and (21) of the judgment (*supra*) it has been held that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. In the case before Hon'ble Apex Court in judgment 2013 (*supra*) workman concerned had merely worked for 286 days and had raised industrial dispute in 1992 whereas her service had been terminated in 1986 and industrial dispute was raised after **six years** from date of termination. The Hon'ble Apex Court has held that compensation awarded by Single Judge of the Hon'ble High Court was too low and awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum. In this judgment (*supra*) criteria has been laid down by Hon'ble Apex Court **when compensation would be appropriate relief instead of engagement**. On the other hand, reliance has been placed upon judgment of Hon'ble High Court of Punjab & Haryana titled as **Naval Singh Vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in **[2018 (157) FLR 746]**, the relevant para is reproduced below:

“Termination-of-workmen-Appeal-Appellant also deserves to be granted similar relief- Which has been granted by State to other workmen, whose services retrenched at same time-**Services of all other workmen were regularized-The appellant should not be discriminated.....**”

15. Relying upon the judgment (2018), ld. Counsel for petitioner has vehemently contended that all the 43 co-workmen including the petitioner who had been retrenched were similarly situated but only 43 have now been engaged in pursuance to court order *vide* which relief of reinstatement in service and lump sum compensation of Rs. 50,000/- had been granted. Since the petitioner as well as co-workmen reinstated are similarly situated and that petitioner has given reasonable explanation for delay in approaching this court for redressal of her grievance, **the petitioner would in equity be entitled to similar relief of reinstatement as has been granted to other co-workmen earlier** rather other co-workmen had issued various demand notices referred to above later than petitioner. Thus, it cannot be stated that petitioner was negligent or had caused delay in moving before the labour authorities. Accordingly, it is held that petitioner like other co-workmen would also be entitled to the same relief in view of judgment of titled as **Naval Singh vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in **[2018 (157) FLR 746]** as well as judgment dated 20.12.2012 passed in **Kanta Devi Vs. State of H.P. & Ors.** in CWP No.5189/20212. The case of petitioner gets further strengthened from order dated 13.5.2010

titled as **The Executive Engineer, Dharampur HPPWD Dharampur Vs. Dhani Ram** in CWP No.1365/2010. In such circumstances, the judgment of Hon'ble Apex Court (2013) is not at all attracted in it as merely provides guidelines and factors to be considered by court before granting final relief besides this judgment does not postulate "**all possible aspects and circumstances**" in **granting relief of compensation instead of reinstatement** and in the case in hand has different facts and on the principle of equity also petitioner can be granted similar relief of reinstatement in service and other consequential benefits although not of back wages, as there is ample evidence on record establishing that petitioner had source of income having cultivable land.

16. I have gone through the above stated judgments, evidence relied upon by the parties and of the view that judgment (2013) of Hon'ble Apex Court in question does not prohibit this court to take into consideration all relevant circumstances while granting final relief to the petitioner. It may not be erroneous to mention here that the Hon'ble Apex Court has not provided any **straight jacket formula** showing some specific ground in which reinstatement in service is to be declined rather various factors which must weigh in the mind of this court have been laid down while granting final relief to petitioner. In the case in hand, petitioner had served notice after **six years** from date of termination having established that respondent had violated Section 25-G of the Act by not following rightful procedure of retrenchment based on principle of 'Last come First go' while retrenching petitioner. Not only this, the seniority list Ex. P1 relied upon by petitioner in unambiguous terms established that junior workmen to petitioner who had been retrenched have been reinstated in pursuance to order of Hon'ble High Court of H.P. which would not in any manner eclipse claim of petitioner from getting relief of reinstatement and other consequential benefit. Although RW1 has denied that petitioner had ever approached her for reengagement and that similar plea has been maintained in reply but in cross-examination RW1 has shown ignorance if petitioner had requested her orally or in writing for re-engagement besides specifically admitted that those co-workmen in whose favour award passed have been engaged. Thus, when RW1 has given evasive reply to question on request of petitioner for re-engagement, it is to be read in favour of the petitioner by holding that petitioner had approached respondent for re-engagement as RW1 being contesting respondent was required to know if petitioner had requested for re-engagement verbally or by in writing and if he was sure that petitioner had not requested him for re-engagement as claimed by petitioner, he ought to have refused the same. As such, petitioner is held to be constantly in touch with respondent for reinstatement which had not been done by the respondent despite raised industrial dispute by petitioner.

17. Ld. Counsel for petitioner has contended with vehemence and placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact then no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner

immediately or earlier and finally raised when despite repeated assurances to absorb the petitioner in govt. department, she was not reengaged by respondent. Thus, the petition filed by petitioner cannot be stated to be bad on the ground of delay and laches. Even if in this case petitioner had raised demand notice after **six years**, yet there is plausible explanation from side of petitioner. Not only that even on the basis of equity being amongst the similarly situated retrenched workmen who had been reinstated as stated above, petitioner too, would be entitled to be given relief of reinstatement instead of compensation and for said reason also judgment of Hon'ble Apex Court 2013 (*supra*) would not apply as in the case before Hon'ble Apex Court had different facts and circumstances as in the present case in not. In view of foregoing discussions, this court is left with no option but to hold that petitioner had been illegally retrenched by respondent and was not reengaged despite 43 co-workers who were similarly situated had been ordered to be reengaged *vide* Award dated 30.3.2009. At the cost of reiteration, it is held that due to delay the claim of petitioner cannot be declined which would be an important circumstance while giving final relief and for the reasons stated in foregoing paragraphs compensation would not be appropriate relief rather petitioner is held entitled for relief of reengagement in service with other consequential benefits.

18. In so far as claim of petitioner *qua* back wages is concerned, suffice would be to state here that PW1 in her cross-examination has admitted that she had cultivable land from which she had income and thus she could not be stated to have remained without any income ever since her termination. Ld. Dy. D.A. representing respondent/State has contended with vehemence that full back wages should not be granted mechanically. In this regard judgment of Hon'ble Apex Court reported in **2014 (140) FLR 901 (SC)** titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal** is quite relevant which provides factors to be considered while granting full wages which could not be granted automatically. As such, when petitioner herself admitted that she had source of income and in view of judgments referred to above in (2014), the petitioner could not be granted back wages automatically moreso when petitioner has admitted that she had source of income from agricultural land although petitioner is held entitled for relief of reinstatement seniority and continuity in service. Keeping in view peculiar facts and circumstances of case as has come in the evidence, petitioner is held entitled for reinstatement, continuity in service and seniority with all consequential benefits except of back wages. In view of foregoing discussions, issue No. 2 is answered in affirmative whereas issues No. 1 and 3 are decided as discussed above. All the above-stated issues are decided accordingly.

Issue No. 4 :

19. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

20. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of her illegal termination **except back wages**. However, petitioner shall be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. In the peculiar circumstances of the case, the parties are left to bear their own costs.

21. The reference is answered in the aforesaid terms.
22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.
23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of June, 2018.

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
(Camp at Mandi).

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
(CAMP AT MANDI)**

Ref. No. : 61/2015
Date of Institution : 23-02-2015
Date of Decision : 27-6-2018

Smt. Kamla Devi w/o Shri Ram Chand, r/o Village Rangar, P.O. Seoh, Tehsil Sarkaghat, District Mandi, H.P.Petitioner.

Versus

The Executive Engineer, HPPWD (B&R) Division Dharampur, District Mandi, H.P.Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.K. Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Smt. Kamla Devi w/o Shri Ram Chand, r/o Village Rangar, P.O. Seoh, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, District Mandi, H.P. *vide* demand notice dated 23.01.2010 regarding her alleged illegal termination of service *w.e.f.* 01.10.2000 suffers from delay and laches? If not, whether termination of the services of Smt. Kamla Devi w/o Shri Ram Chand, r/o Village Rangar, P.O. Seoh, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, District Mandi, H.P. *w.e.f.* 01.10.2000 without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the worker, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged as daily waged beldar by respondent on 7.7.1998 where she worked upto 31.9.2000 when her services were illegally retrenched on 1.10.2000. Averment made in the claim petition revealed that respondent had not prepared any seniority list and that juniors to the petitioner who worked in the same category had been allowed to remain in continuous service and thus respondent is alleged to have not followed the procedure of retrenchment envisaged under Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act" for brevity) which is based on the doctrine of 'First come Last go' It further remains the case of the claimant that persons namely Savitri, Rajesh Kumar, Shashi Lal, Sat Pal, Roshani, Gulab Singh, Devender Kumar, Barfu Ram, Krishan Devi, Achhari Devi, Barfi Devi, Raj Kumar and Ranjeet Singh were juniors to her who were allowed to continue service and have been regularized on 28.11.2008. It is claimed that despite availability of sufficient work and funds, respondent had retrenched petitioner and several others and that retrenchment was violation of provisions of Sections 25-G, 25-H and 25-N of the Act. It is claimed that some of the retrenched workers had raised industrial dispute before Conciliation Officer but conciliation failed and matter was thereafter referred to this court for adjudication and thereafter awards were passed on 30.3.2009 in favour of workmen *vide* which they were given benefit of reinstatement, seniority and back wages. It is alleged that part of back wages was challenged by respondent in Hon'ble High Court of H.P. and the same was decided *vide* common judgment reported in LHLJ 2010 Vol. 2 titled as Executive Engineer, HPPWD Dharampur vs. Dhani Ram/Nihal Chand decided on 13.5.2010 *vide* which instead of 50% back wages, a lump sum compensation of Rs. 50,000/- was granted to the retrenched workmen. It is further alleged that in compliance to the award passed by this court on 30.3.2009, 43 retrenched workmen joined their duties *w.e.f.* 16.9.2009 and even at that time, petitioner requested repeatedly although verbally to respondent to reinstate her who was senior to those retrenched workmen engaged in pursuance to award dated 30.3.2009 but respondent did not re-engage petitioner. It is also claimed by petitioner that despite visiting office of respondent several times requesting to reinstate but matter was lingered on one pretext to other and also on the ground of the decision for reinstatement was to be taken by the government. Accordingly, petitioner referring to various reported judgments in her claim petition has prayed for her reinstatement along-with back wages, continuity in service from the date of illegal retrenchment/termination along-with other consequential benefits and to any other relief petitioner is found entitled besides regularization as per the provisions of law or from the date when juniors to her have been regularized.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged in July, 1998 who had worked upto September, 1999 and thereafter petitioner had left the job of her own sweet will. Further denied that respondent had violated principle of 'First come Last go'. It is emphatically denied that petitioner ever requested respondent for re-engagement rather petitioner had raised demand notice in the year 2010 after about five years. It is also admitted that as per awards of this court, 43 workmen were re-engaged but the petitioner had not filed any case before any court and those who had filed case before Labour Court were engaged. It is denied that petitioner was illegally retrenched however admitted that instead of back wages, a lump sum amount of Rs. 50,000/- was ordered to be granted to those workmen who had been retrenched and were parties before the Hon'ble High Court of H.P. in CWP No. 1387/2010 titled as Nihal Chand Vs. State of H.P.. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. P1, copies of demand

notices of other workers namely Mali Devi, Sita Ram, Basant Singh, Kashalya Devi, Magru Dutt, Nawab Khan, Sanjay Kumar, Kanta Devi, Drompati Devi, Shailander, Raman Kumar, Amar Singh, Manohar Lal, Gobind Ram, Kashmir Singh, Budhi Singh, Achhru Ram, Rajender Pal, Sapindra Devi, Balwant Singh, Dhobi Devi, Krishni Devi, Prem Singh, Kamli Devi, Om Chand, Sunita Devi, Savitri Devi, Ruma Devi, Sheela Devi, Nathu Ram, Roshani Devi, Puran Chand, Pawan Kumar, Kamla Devi, Kunta Devi, Lachhman, Pratap Chand, Mansa Devi, Puran Chand, Kamla Devi, Saroja Devi, Duni Chand respectively Ex. P2 to Ex. P43, copy of demand notice of petitioner Ex. P-44, copy of year-wise mandays of workers Ex. P45 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, Executive Engineer, HPPWD Division Dharampur, tendered/proved her affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed evidence.

7. I have heard the ld. Counsel representing parties gone through evidence on record of this case carefully relevant for dispose of present claim petition.

8. From the contentions raised, following issues were framed on 8.12.2015 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 23.1.2010 *qua* her termination of service during 1.10.2000 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...OPP.
2. Whether termination of services of the petitioner by the respondent *w.e.f.* 1.10.2000 is/was improper and unjustified as alleged? ...OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
4. Whether the claim petition is not maintainable in the present form? ...OPR.

Relief.

9. For the reasons to be recorded hereinafter, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4: No

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that respondent RW1 in the witness box has admitted that as per seniority list Ex. P1 workmen shown therein were junior to petitioner and that

when petitioner was retrenched these juniors were allowed to remain in service. By such an admission, RW1 has not only admitted retrenchment of petitioner in violation of doctrine of 'Last come First go' envisaged under Section 25-G of the Act but at the same time, he has also admitted relationship with the petitioner for having worked from July, 1998 to 31.9.2000 as daily waged beldar under respondent. The case of the petitioner simplicitor is that she has been illegally retrenched, retaining juniors which was sheer discrimination as the only purpose for retrenchment was to retain the junior who were the workmen of choice of respondent. In so far as award passed in favour of 43 similarly situated workers are concerned, RW1 has admitted that in CWP No.5189/2013 titled as *Kanta Devi Vs. State of H.P. and Ors.* similarly situated workmen as that of petitioner had been reinstated giving benefit of seniority with continuity in service and a lump sum back wages of Rs.50,000/- . Significantly, RW1 has admitted that order passed Kanta Devi's case (*supra*) has been implemented by respondent besides admitted that Hon'ble High Court of H.P. has held that retrenchment was illegal and not in accordance with law.

12. PW1 Kamla Devi (petitioner) has stepped into witness box sworn in affidavit Ex. PW1/A reiterated her claim as maintained in claim petition besides stated that respondent had not prepared any seniority list and that juniors to the petitioner had been allowed to continue. It is evident from affidavit Ex. PW1/A that juniors to the petitioner have been allowed remain in service who had been regularized on 28.11.2008. Thus the allegation of petitioner primarily remains *qua* violation of Section 25-H of the Act as petitioner had been retrenched arbitrarily and juniors were retained in violation of doctrine of 'First come Last go' envisaged under Section 25- G of the Act. Be it stated that RW1 in cross-examination has admitted that co-workmen as shown named in para No.3 of claim petition were juniors to petitioner which necessarily follows that juniors have been retained and petitioner who was senior has been retrenched violating Section 25-H of the Act.

13. Ex. RW1/B is mandays chart relating to petitioner which showed her to have worked for 85 days in the year 1998 and 156 days in 1999 respectively. Be it stated that Ex. P1 is seniority list of daily waged beldar in respect of Dharampur Division which showed that those workmen who had completed eight years of service as on 31.3.2008 were regularized. Ex. P2 to P43 are various demand notices issued by several retrenched workers as enumerated in these notices. With the aid of copies of these notices, ld. Counsel for petitioner has established that petitioner in this case had issued demand notice Ex. P44 on 23.1.2010 whereas all the 43 retrenched workmen had given demand notices later than petitioner and were reinstated by the department in pursuance to order of Hon'ble High Court of H.P as stated above. Thus, while relying upon these demand notices petitioner has also sought relief of reinstatement based on equity as those workmen who were similarly situated have been reinstated with consequential benefits although in pursuance to court order whereas ld. Dy. D.A. representing respondent has stated that although respondent had issued demand notice in less than five years from date of her retrenchment yet for the delay in raising demand notice, the petitioner is not entitled to relief sought for.

14. Ld. Dy. D.A. representing respondent has placed reliance upon the judgment of Hon'ble Apex Court reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh**. In this judgment Hon'ble Apex Court has held that delay in raising industrial dispute is certainly important aspect/circumstance which labour court has to keep in mind while exercising discretion while giving final relief. In para Nos. (20) and (21) of the judgment (*supra*) it has been held that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. In the case before Hon'ble Apex Court in judgment 2013 (*supra*) workman concerned had merely worked for 286 days and had raised industrial dispute in 1992 whereas her service had been terminated in 1986 and industrial dispute was raised after **six years** from date of termination. The Hon'ble Apex Court has

held that compensation awarded by Single Judge of the Hon'ble High Court was too low and awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum. In this judgment (supra) criteria has been laid down by Hon'ble Apex Court **when compensation would be appropriate relief instead of engagement**. On the other hand, reliance has been placed upon judgment of Hon'ble High Court of Punjab & Haryana titled as **Naval Singh Vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in [2018 (157) FLR 746], the relevant para is reproduced below:

“Termination-of-workmen-Appeal-Appellant also deserves to be granted similar relief- Which has been granted by State to other workmen, whose services retrenched at same time-**Services of all other workmen were regularized-The appellant should not be discriminated.....”**

15. Relying upon the judgment (2018), ld. Counsel for petitioner has vehemently contended that all the 43 co-workmen including the petitioner who had been retrenched were similarly situated but only 43 have now been engaged in pursuance to court order *vide* which relief of reinstatement in service and lump sum compensation of Rs.50,000/- had been granted. Since the petitioner as well as co-workmen reinstated are similarly situated and that petitioner has given reasonable explanation for delay in approaching this court for redressal of her grievance, **the petitioner would in equity be entitled to similar relief of reinstatement as has been granted to other co-workmen earlier** rather other co-workmen had issued various demand notices referred to above later than petitioner. Thus, it cannot be stated that petitioner was negligent or had caused delay in moving before the labour authorities. Accordingly, it is held that petitioner like other co-workmen would also be entitled to the same relief in view of judgment of titled as **Naval Singh vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in [2018 (157) FLR 746] as well as judgment dated 20.12.2012 passed in **Kanta Devi vs. State of H.P. & Ors.** in CWP No. 5189/2012. The case of petitioner gets further strengthened from order dated 13.5.2010 titled as **The Executive Engineer, Dharampur HPPWD Dharampur Vs. Dhani Ram** in CWP no.1365/2010. In such circumstances, the judgment of Hon'ble Apex Court (2013) is not at all attracted in it as merely provides guidelines and factors to be considered by court before granting final relief besides this judgment does not postulate “**all possible aspects and circumstances**” in **granting relief of compensation instead of reinstatement** and in the case in hand has different facts and on the principle of equity also petitioner can be granted similar relief of reinstatement in service and other consequential benefits although not of back wages, as there is ample evidence on record establishing that petitioner had source of income having cultivable land.

16. I have gone through the above stated judgments, evidence relied upon by the parties and of the view that judgment (2013) of Hon'ble Apex Court in question does not prohibit this court to take into consideration all relevant circumstances while granting final relief to the petitioner. It may not be erroneous to mention here that the Hon'ble Apex Court has not provided any **straight jacket formula** showing some specific ground in which reinstatement in service is to be declined rather various factors which must weigh in the mind of this court have been laid down while granting final relief to petitioner. In the case in hand, petitioner had served notice after **ten years** from date of termination having established that respondent had violated Section 25-G of the Act by not following rightful procedure of retrenchment based on principle of ‘Last come First go’ while retrenching petitioner. Not only this, the seniority list Ex. P1 relied upon by petitioner in unambiguous terms established that junior workmen to petitioner who had been retrenched have been reinstated in pursuance to order of Hon'ble High Court of H.P. which would not in any manner eclipse claim of petitioner from getting relief of reinstatement and other consequential benefit. Although RW1 has denied that petitioner had ever approached her for re-engagement and that similar plea has been maintained in reply but in cross- examination RW1 has shown ignorance if petitioner had requested her orally or in writing for re-engagement besides specifically admitted

that those co-workmen in whose favour award passed have been engaged. Thus, when RW1 has given evasive reply to question on request of petitioner for re-engagement, it is to be read in favour of the petitioner by holding that petitioner had approached respondent for re-engagement as RW1 being contesting respondent was required to know if petitioner had requested for re-engagement verbally or by in writing and if he was sure that petitioner had not requested him for re-engagement as claimed by petitioner, he ought to have refused the same. As such, petitioner is held to be constantly in touch with respondent for reinstatement which had not been done by the respondent despite raised industrial dispute by petitioner.

17. Ld. Counsel for petitioner has contended with vehemence and placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact then no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier and finally raised when despite repeated assurances to absorb the petitioner in govt. department, she was not reengaged by respondent. Thus, the petition filed by petitioner cannot be stated to be bad on the ground of delay and laches. Even if in this case petitioner had raised demand notice after **ten years**, yet there is plausible explanation from side of petitioner. Not only that even on the basis of equity being amongst the similarly situated retrenched workmen who had been reinstated as stated above, petitioner too, would be entitled to be given relief of reinstatement instead of compensation and for said reason also judgment of Hon'ble Apex Court 2013 (*supra*) would not apply as in the case before Hon'ble Apex Court had different facts and circumstances as in the present case. In view of foregoing discussions, this court is left with no option but to hold that petitioner had been illegally retrenched by respondent and was not reengaged despite 43 co-workers who were similarly situated had been ordered to be reengaged *vide* Award dated 30.3.2009. At the cost of reiteration, it is held that due to delay, the claim of petitioner cannot be declined which would be an important circumstance while giving final relief and for the reasons stated in foregoing paragraphs compensation would not be appropriate relief rather petitioner is held entitled for relief of reengagement in service with other consequential benefits.

18. In so far as claim of petitioner *qua* back wages is concerned, suffice would be to state here that PW1 in her cross-examination has admitted that she had cultivable land from which she had income and thus she could not be stated have remained without any income ever since her termination. Ld. Dy. D.A. representing respondent/State has contended with vehemence that full back wages should not be granted mechanically. In this regard judgment of Hon'ble Apex Court reported in **2014 (140) FLR 901 (SC) titled as Bharat Sanchar Nigam Ltd. vs. Bhurumal** is quite relevant which provides factors to be considered while granting full wages which could not be granted automatically. As such, when petitioner herself admitted that she had source of income and in view

of judgments referred to above in (2014), the petitioner could not be granted back wages automatically moreso when petitioner has admitted that she had source of income from agricultural land although petitioner is held entitled for relief of reinstatement seniority and continuity in service. Keeping in view peculiar facts and circumstances of case as has come in the evidence, petitioner is held entitled for reinstatement, continuity in service and seniority with all consequential benefits except of back wages. In view of foregoing discussions, issue No. 2 is answered in affirmative whereas issues No. 1 and 3 are decided as discussed above. All the above-stated issues are decided accordingly.

Issue No. 4 :

19. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

20. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of her illegal termination **except back wages**. However, petitioner shall be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. In the peculiar circumstances of the case, the parties are left to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of June, 2018.

K.K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
(Camp at Mandi).

**IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.
(CAMP AT MANDI)**

Ref. No. : 60/2015

Date of Institution : 23-02-2015

Date of Decision : 27-6-2018

Smt. Jalpi Devi w/o Shri Bhagi Rath, r/o Village Rakhera, P.O. Broti, Tehsil Sarkaghat,
District Mandi, H.P.Petitioner.

Versus

The Executive Engineer, HPPWD (B&R) Division Dharampur, District Mandi, H.P.
....Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.K. Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Smt. Jalpi Devi w/o Shri Bhagi Rath, r/o Village Rakhera, P.O. Broti, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, District Mandi, H.P. *vide* demand notice dated 05.04.2010 regarding her alleged illegal termination of service *w.e.f.* 01.10.1999 suffers from delay and laches? If not, Whether termination of the services of Smt. Jalpi Devi w/o Shri Bhagi Rath, r/o Village Rakhera, P.O. Broti, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, District Mandi, H.P. *w.e.f.* 01.10.1999 without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the worker, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner above named had been engaged as daily waged beldar by respondent on 1.5.1998 where she worked upto 30.9.1999 when her services were illegally retrenched on 1.10.1999. Averment made in the claim petition revealed that respondent had not prepared any seniority list and that juniors to the petitioner who worked in the same category had been allowed to remain in continuous service and thus respondent is alleged to have not followed the procedure of retrenchment envisaged under Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act” for brevity) which is based on the doctrine of ‘First come Last go’ It further remains the case of the claimant that persons namely Savitri, Rajesh Kumar, Shashi Lal, Sat Pal, Roshani, Gulab Singh, Devender Kumar, Barfu Ram, Krishan Devi, Achhari Devi, Barfi Devi, Raj Kumar and Ranjeet Singh were juniors to her who were allowed to continue service and have been regularized on 28.11.2008. It is claimed that despite availability of sufficient work and funds, respondent had retrenched petitioner and several others and that retrenchment was violation of provisions of Sections 25-G, 25-H and 25-N of the Act. It is claimed that some of the retrenched workers had raised industrial dispute before Conciliation Officer but conciliation failed and matter was thereafter referred to this court for adjudication and thereafter awards were passed on 30.3.2009 in favour of workmen *vide* which they were given benefit of reinstatement, seniority and back wages. It is alleged that part of back wages was

challenged by respondent in Hon'ble High Court of H.P. and the same was decided *vide* common judgment reported in LHLJ 2010 Vol. 2 titled as Executive Engineer, HPPWD Dharampur vs. Dhani Ram/Nihal Chand decided on 13.5.2010 *vide* which instead of 50% back wages, a lump sum compensation of Rs. 50,000/- was granted to the retrenched workmen. It is further alleged that in compliance to the award passed by this court on 30.3.2009, 43 retrenched workmen joined their duties *w.e.f.* 16.9.2009 and even at that time, petitioner requested repeatedly although verbally to respondent to reinstate her who was senior to those retrenched workmen engaged in pursuance to award dated 30.3.2009 but respondent did not re-engage petitioner. It is also claimed by petitioner that despite visiting office of respondent several times requesting to reinstate but matter was lingered on one pretext to other and also on the ground of the decision for reinstatement was to be taken by the government. Accordingly, petitioner referring to various reported judgments in her claim petition has prayed for her reinstatement along-with back wages, continuity in service from the date of illegal retrenchment/termination along-with other consequential benefits and to any other relief petitioner is found entitled besides regularization as per the provisions of law or from the date when juniors to her have been regularized.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged in November, 1998 who had worked upto September, 1999 and thereafter petitioner had left the job of her own sweet will. Further denied that respondent had violated principle of 'First come Last go'. It is emphatically denied that petitioner ever requested respondent for re-engagement rather petitioner had raised demand notice in the year 2010 after about five years. It is also admitted that as per awards of this court, 43 workmen were re-engaged but the petitioner had not filed any case before any court and those who had filed case before Labour Court were engaged. It is denied that petitioner was illegally retrenched however admitted that instead of back wages, a lump sum amount of Rs. 50,000/- was ordered to be granted to those workmen who had been retrenched and were parties before the Hon'ble High Court of H.P. in CWP No.1387/2010 titled as Nihal Chand Vs. State of H.P.. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. P1, copies of demand notices of other workers namely Mali Devi, Sita Ram, Basant Singh, Kashalya Devi, Magru Dutt, Nawab Khan, Sanjay Kumar, Kanta Devi, Drompati Devi, Shailander, Raman Kumar, Amar Singh, Manohar Lal, Gobind Ram, Kashmir Singh, Budhi Singh, Achhru Ram, Rajender Pal, Sapindra Devi, Balwant Singh, Dhobi Devi, Krishni Devi, Prem Singh, Kamli Devi, Om Chand, Sunita Devi, Savitri Devi, Ruma Devi, Sheela Devi, Nathu Ram, Roshani Devi, Puran Chand, Pawan Kumar, Kamla Devi, Kunta Devi, Lachhman, Pratap Chand, Mansa Devi, Puran Chand, Kamla Devi, Saroja Devi, Duni Chand respectively Ex. P2 to Ex. P43, copy of demand notice of petitioner Ex. P-44, copy of year-wise mandays of workers Ex. P45 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, Executive Engineer, HPPWD Division Dharampur, tendered/proved her affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed evidence.

7. I have heard the ld. counsel representing parties gone through evidence on record of this case carefully relevant for dispose of present claim petition.

8. From the contentions raised, following issues were framed on 8.12.2015 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 05.4.2010 *qua* her termination of service during 1.10.1999 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...OPP.
2. Whether termination of services of the petitioner by the respondent *w.e.f.* 1.10.1999 is/was improper and unjustified as alleged? ...OPP.
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
4. Whether the claim petition is not maintainable in the present form? ...OPR.

Relief.

9. For the reasons to be recorded hereinafter, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that respondent RW1 in the witness box has admitted that as per seniority list Ex. P1 workmen shown therein were junior to petitioner and that when petitioner was retrenched these juniors were allowed to remain in service. By such an admission, RW1 has not only admitted retrenchment of petitioner in violation of doctrine of 'Last come First go' envisaged under Section 25-G of the Act but at the same time, he has also admitted relationship with the petitioner for having worked from November, 1998 to 30.9.1999 as daily waged beldar under respondent. The case of the petitioner simplicitor is that she has been illegally retrenched, retaining juniors which was sheer discrimination as the only purpose for retrenchment was to retain the junior who were the workmen of choice of respondent. In so far as award passed in favour of 43 similarly situated workers are concerned, RW1 has admitted that in CWP no.5189/2013 titled as Kanta Devi vs. State of H.P. and Ors. similarly situated workmen as that of petitioner had been reinstated giving benefit of seniority with continuity in service and a lump sum back wages of Rs.50,000/- . Significantly, RW1 has admitted that order passed Kanta Devi's case (*supra*) has been implemented by respondent besides admitted that Hon'ble High Court of H.P. has held that retrenchment was illegal and not in accordance with law.

12. PW1 Jalpi Devi (petitioner) has stepped into witness box sworn in affidavit Ex. PW1/A reiterated her claim as maintained in claim petition besides stated that respondent had not prepared any seniority list and that juniors to the petitioner had been allowed to continue. It is evident from

affidavit Ex. PW1/A that juniors to the petitioner have been allowed remain in service who had been regularized on 28.11.2008. Thus the allegation of petitioner primarily remains *qua* violation of Section 25-H of the Act as petitioner had been retrenched arbitrarily and juniors were retained in violation of doctrine of 'First come Last go' envisaged under Section 25-G of the Act. Be it stated that RW1 in cross-examination has admitted that co-workmen as shown named in para No. 3 of claim petition were juniors to petitioner which necessarily follows that juniors have been retained and petitioner who was senior has been retrenched violating Section 25-H of the Act.

13. Ex. RW1/B is mandays chart relating to petitioner which showed her to have worked for 57 days in the year 1998 and 226½ days in 1999 respectively. Be it stated that Ex. P1 is seniority list of daily waged beldar in respect of Dharampur Division which showed that those workmen who had completed eight years of service as on 31.3.2008 were regularized. Ex. P2 to P43 are various demand notices issued by several retrenched workers as enumerated in these notices. With the aid of copies of these notices, ld. Counsel for petitioner has established that petitioner in this case had issued demand notice Ex. P44 on 05.4.2010 whereas all the 43 retrenched workmen had given demand notices later than petitioner and were reinstated by the department in pursuance to order of Hon'ble High Court of H.P as stated above. Thus, while relying upon these demand notices petitioner has also sought relief of reinstatement based on equity as those workmen who were similarly situated have been reinstated with consequential benefits although in pursuance to court order whereas ld. Dy. D.A. representing respondent has stated that although respondent had issued demand notice in less than five years from date of her retrenchment yet for the delay in raising demand notice, the petitioner is not entitled to relief sought for.

14. Ld. Dy. D.A. representing respondent has placed reliance upon the judgment of Hon'ble Apex Court reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh**. In this judgment Hon'ble Apex Court has held that delay in raising industrial dispute is certainly important aspect/circumstance which labour court has to keep in mind while exercising discretion while giving final relief. In para nos. (20) and (21) of the judgment (*supra*) it has been held that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. In the case before Hon'ble Apex Court in judgment 2013 (*supra*) workman concerned had merely worked for 286 days and had raised industrial dispute in 1992 whereas her service had been terminated in 1986 and industrial dispute was raised after **six years** from date of termination. The Hon'ble Apex Court has held that compensation awarded by Single Judge of the Hon'ble High Court was too low and awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum. In this judgment (*supra*) criteria has been laid down by Hon'ble Apex Court **when compensation would be appropriate relief instead of engagement**. On the other hand, reliance has been placed upon judgment of Hon'ble High Court of Punjab & Haryana titled as **Naval Singh Vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in **[2018 (157) FLR 746]**, the relevant para is reproduced below:

"Termination-of-workmen-Appeal-Appellant also deserves to be granted similar relief- Which has been granted by State to other workmen, whose services retrenched at same time-**Services of all other workmen were regularized-The appellant should not be discriminated.....**"

15. Relying upon the judgment (2018), ld. Counsel for petitioner has vehemently contended that all the 43 co-workmen including the petitioner who had been retrenched were similarly situated but only 43 have now been engaged in pursuance to court order *vide* which relief of reinstatement in service and lump sum compensation of Rs.50,000/- had been granted. Since the petitioner as well as co-workmen reinstated are similarly situated and that petitioner has given

reasonable explanation for delay in approaching this court for redressal of her grievance, **the petitioner would in equity be entitled to similar relief of reinstatement as has been granted to other co-workmen earlier** rather other co-workmen had issued various demands notices referred to above later than petitioner. Thus, it cannot be stated that petitioner was negligent or had caused delay in moving before the labour authorities. Accordingly, it is held that petitioner like other co-workmen would also be entitled to the same relief in view of judgment of titled as **Naval Singh Vs. P.O. Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad**, reported in [2018 (157) FLR 746] as well as judgment dated 20.12.2012 passed in **Kanta Devi Vs. State of H.P. & Ors.** in CWP No.5189/20212. The case of petitioner gets further strengthened from order dated 13.5.2010 titled as **The Executive Engineer, Dharampur HPPWD Dharampur Vs. Dhani Ram** in CWP no.1365/2010. In such circumstances, the judgment of Hon'ble Apex Court (2013) is not at all attracted in it as merely provides guidelines and factors to be considered by court before granting final relief besides this judgment does not postulate "**all possible aspects and circumstances**" in **granting relief of compensation instead of reinstatement** and in the case in hand has different facts and on the principle of equity also petitioner can be granted similar relief of reinstatement in service and other consequential benefits although not of back wages, as there is ample evidence on record establishing that petitioner had source of income having cultivable land.

16. I have gone through the above stated judgments, evidence relied upon by the parties and of the view that judgment (2013) of Hon'ble Apex Court in question does not prohibit this court to take into consideration all relevant circumstances while granting final relief to the petitioner. It may not be erroneous to mention here that the Hon'ble Apex Court has not provided any **straight jacket formula** showing some specific ground in which reinstatement in service is to be declined rather various factors which must weigh in the mind of this court have been laid down while granting final relief to petitioner. In the case in hand, petitioner had served notice after **eleven years** from date of termination having established that respondent had violated Section 25-G of the Act by not following rightful procedure of retrenchment based on principle of 'Last come First go' while retrenching petitioner. Not only this, the seniority list Ex. P1 relied upon by petitioner in unambiguous terms established that junior workmen to petitioner who had been retrenched have been reinstated in pursuance to order of Hon'ble High Court of H.P. which would not in any manner eclipse claim of petitioner from getting relief of reinstatement and other consequential benefit. Although RW1 has denied that petitioner had ever approached her for reengagement and that similar plea has been maintained in reply but in cross- examination RW1 has shown ignorance if petitioner had requested her orally or in writing for reengagement besides specifically admitted that those co-workmen in whose favour award passed have been engaged. Thus, when RW1 has given evasive reply to question on request of petitioner for re-engagement, it is to be read in favour of the petitioner by holding that petitioner had approached respondent for re-engagement as RW1 being contesting respondent was required to know if petitioner had requested for re-engagement verbally or by in writing and if he was sure that petitioner had not requested him for re-engagement as claimed by petitioner, he ought to have refused the same. As such, petitioner is held to be constantly in touch her with respondent for reinstatement which had not been done by the respondent despite raised industrial dispute by petitioner.

17. Ld. Counsel for petitioner has contended with vehemence and placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did

not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact then no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier and finally raised when despite repeated assurances to absorb the petitioner in govt. department, she was not reengaged by respondent. Thus, the petition filed by petitioner cannot be stated to be bad on the ground of delay and laches. Even if in this case petitioner had raised demand notice after **eleven years**, yet there is plausible explanation from side of petitioner. Not only that even on the basis of equity being amongst the similarly situated retrenched workmen who had been reinstated as stated above, petitioner too, would be entitled to be given relief of reinstatement instead of compensation and for said reason also judgment of Hon'ble Apex Court 2013 (*supra*) would not apply as in the case before Hon'ble Apex Court had different facts and circumstances as in the present case. In view of foregoing discussions, this court is left with no option but to hold that petitioner had been illegally retrenched by respondent and was not reengaged despite 43 co-workers who were similarly situated had been ordered to be reengaged *vide* Award dated 30.3.2009. At the cost of reiteration, it is held that due to delay the claim of petitioner cannot be declined which would be an important circumstance while giving final relief and for the reasons stated in foregoing paragraphs compensation would not be appropriate relief rather petitioner is held entitled for relief of reengagement in service with other consequential benefits.

18. In so far as claim of petitioner *qua* back wages is concerned, suffice would be to state here that PW1 in her cross-examination has admitted that she had cultivable land from which she had income and thus she could not be stated have remained without any income ever since her termination. Ld. Dy. D.A. representing respondent/State has contended with vehemence that full back wages should not be granted mechanically. In this regard judgment of Hon'ble Apex Court reported in **2014 (140) FLR 901 (SC)** titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal** is quite relevant which provides factors to be considered while granting full wages which could not be granted automatically. As such, when petitioner herself admitted that she had source of income and in view of judgments referred to above in (2014), the petitioner could not be granted back wages automatically moreso when petitioner has admitted that she had source of income from agricultural land although petitioner is held entitled for relief of reinstatement seniority and continuity in service. Keeping in view peculiar facts and circumstances of case as has come in the evidence, petitioner is held entitled for reinstatement, continuity in service and seniority with all consequential benefits except of back wages. In view of foregoing discussions, issue No. 2 is answered in affirmative whereas issue No. 1 and 3 are decided as discussed above. All the above-stated issues are decided accordingly.

Issue No. 4 :

19. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

20. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of her illegal termination **except back wages**. However, petitioner shall be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. In the peculiar circumstances of the case, the parties are left to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of June, 2018.

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
(Camp at Mandi).

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.

Ref. No. : 206/2015
 Date of Institution : 15-05-2015
 Date of Decision : 29-6-2018

Shri Ravi Kumar s/o Shri Gulab Singh, r/o Village and Post Office Dhalara, Tehsil Sarkaghat, District Mandi, H.P.Petitioner.

Versus

The Executive Engineer, HPPWD, Division Dharampur, District Mandi, H.P.

....Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. N.L. Kaundal, AR
	: Sh. Vijay Kaundal, Adv.
For the Respondent	: Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

Whether the industrial dispute raised by the worker Shri Ravi Kumar s/o Shri Gulab Singh, r/o Village and Post Office Dhalara, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. *vide* demand

notice dated 27.01.2010 regarding his alleged illegal termination of service *w.e.f.* 01.02.2004 suffers from delay and laches? If not, Whether termination of the services of Shri Ravi Kumar s/o Shri Gulab Singh, r/o Village and Post of Dhalara, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. *w.e.f.* 01.02.2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. After the receipt of the abovestated reference, a corrigendum dated 31st March, 2017 was received from the appropriate government which reads as under:

"Whereas, an alleged industrial dispute exists between the Shri Ravi Kumar s/o Shri Gulab Singh, r/o V.P.O. Dhalara, Tehsil Sarkaghat, District Mandi, H.P. and the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. whereas, a reference has been made to the Ld. Labour Court Dharamshala, District Kangra, H.P. *vide* notification of even No. dated 29.04.2015 for its legal adjudication. However, inadvertently the correct facts could not be mentioned in the date of termination of the said notification. Therefore, the same may be read as "09-02-2004" instead of "01-02-2004".

3. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

4. Brief facts as set up in the claim petition reveal that petitioner was engaged by respondent on daily wage basis on muster roll as beldar in the year 2001 who continuously worked upto January, 2004 and had completed 240 days in each calendar year and thus was covered under definition of 'continuous service' envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act' for brevity). Averments made in the claim petition revealed that petitioner had been retrenched by respondent in the month of February, 2004 without issuing any notice or paying retrenchment compensation under Section 25-F of the Act. It is specifically alleged that at the time of retrenchment of petitioner principle of 'Last come First go' was not followed by respondent as Subhash Chand, Shashi Kant, Bidhi Chand, Dharampal, Inder Singh, Ajay Kumar and Roshani Devi were junior to petitioner who were retained and consequently regularized. It further remains case of the petitioner that 1697 workers had been retrenched illegally by the respondent in June/July, 2004 but petitioner had not been called for re-employment in writing to join duty when he approached respondent in the month December, 2004 to provide work considering seniority but respondent had ignored request informing that surplus workmen of Dharampur Division have been retrenched and process for retrenchment was still continuing at that time and as such department cannot re-engage petitioner. It is alleged that in the month February, 2004 persons namely Balak Ram, Rakesh Kumar, Desh Raj, Abdul Razzak, Mansa Ram, Inder Pal, had been appointed who had been re-engaged in month of June/July, 2004. It is alleged that on 8.7.2005, 1087 workmen who were daily wagers and in the year 2007 and 2008 about 500 workmen were reinstated by this court and retrenchment order dated 8.7.2005 passed by respondent had been quashed and set aside with direction to respondent to reinstate the above named persons with 50% back wages and consequential benefits. It is alleged that Vijay Kumar, Megh Singh, Sanjay Kumar, Raj Kumar, Roop Lal, Saroj Kumar and Malkeet Khan have been reinstated on the basis of award passed by this court who worked with different Sub Division under the respondent. It is alleged that one Mamta Devi r/o Village Gehra, P.O. Saklana, Tehsil Sarkaghat, District Mandi, H.P. was appointed by respondent in the year 2000 who had been retrenched in the year 2005 and was again re-engaged by respondent in the year 2007 on compassionate without affording opportunity to the petitioner for re-employment besides stated Mamta Devi was still working with respondent. It is alleged that aggrieved with the action of

respondent, petitioner had raised industrial dispute *vide* which demand notice dated 27.2.2010 copy of which had been forwarded to Labour Officer, Mandi who tried conciliation but failed and had submitted failure report under Section 12(4) of the Act in pursuance to which Labour Commissioner declined to make reference. It is alleged that when Labour Commissioner did not make reference to this court due to which petitioner had filed CWP No. 6764/2014 which was decided on 3.3.2015 *vide* which Labour Commissioner was directed to refer dispute to this court for adjudication. Accordingly, verbal order of respondent in retrenching service of petitioner in February, 2004 is stated to be illegal and unjustified in violation of mandatory provisions of the Act which has been prayed to be set aside. It is alleged that petitioner was still unemployed as such he would be entitled for full back wages from February, 2004. Accordingly, petitioner prays for relief of reinstatement, seniority and continuity in service with full back wages.

5. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted to the extent that petitioner was engaged in August, 2000 who worked upto February, 2004 after adopting requisite codal formalities. It is alleged that after retrenchment as stated above, several workmen made dharna and strike who were considered for re-engagement by respondent and that petitioner had not joined his duty including other workmen who were retrenched in February, 2004. It is alleged that some junior daily wages workers were transferred to Dharampur Division but their seniority list was not received due to which they were retained however after receiving the seniority list, retrenchment notice to above junior had been served who were surplus and no more required by respondent. Further denied that principle of 'Last come First go' was not followed while retrenching workmen including petitioner. Admitted that respondent had retrenched 1087 workmen during the year 2015 who had challenged their retrenchment before this court and award was passed in their favour but petitioner had not filed any case. In so far as engagement of Mamta Devi is concerned, it is alleged that she was widow whose husband had died and thus her engagement was on compassionate and her engagement on compassionate ground has been done after approval of the government. It is admitted that petitioner was retrenched in the month of February, 2004 but all the retrenched workmen were reengaged in phased manner but petitioner did not join his duty and as such he is not entitled for any relief. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of mandays chart of Shashi Kant Ex. PW1/B, copy of demand RTI information dated 13.11.2013 Ex. PW1/C, copy of reply to the demand notice Ex. PW1/D, copy of letter dated 10.1.2014 Ex. PW1/E and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, Executive Engineer, HPPWD Division Dharampur, tendered/proved his affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and closed evidence.

8. I have heard the ld. Counsel representing parties gone through evidence on record of this case carefully relevant for dispose of present claim petition.

9. From the contentions raised, following issues were framed on 6.12.2017 for determination:

1. Whether industrial dispute raised by petitioner *vide* demand notice dated 27.1.2010 *qua* his termination of service *w.e.f.* 9.2.2004 by respondent suffers from *vice* of delay and laches as alleged? If so, its effect? ...OPP.
2. Whether termination of services of the petitioner by the respondent *w.e.f.* 9.2.2004 is/was illegal and unjustified as alleged? ...OPP.

3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.

4. Whether the claim petition is not maintainable in the present form? ...OPR.

Relief.

10. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3 :

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterating his stand as maintained in the claim petition. Ex. RW1/B is the mandays chart of petitioner showing him to have worked for 153 days in the year 2000, 184 days in 2001, 365 days in 2002, 268 days in 2003 and 30 days in 2004. Be it stated that while preparing mandays chart aforesaid respondent has not specifically shown different number of days when the petitioner had worked in a particular year or in a month and in such like situation inference has to be drawn in favour of petitioner holding that prior to his termination in 2004, petitioner had rendered service of 240 days or more. RW1 Shri Pramod Kashyap, Executive Engineer, HPPWD Dharampur in cross-examination has admitted that petitioner had worked from 2000 to February, 2004 but petitioner himself has not disclosed specific date when he was engaged the only inference to be drawn is that petitioner had joined in August, 2000 as has been admitted by respondent in its reply to claim petition. Cross-examination of respondent RW1 further revealed that petitioner along-with other workmen had been retrenched after being paid compensation. He has further admitted that in 2004, there was an agreement between union according to which retrenched workmen were ordered to be reengaged. He has admitted that according to record available in his office no notice was given to petitioner to join service. Significantly, he has also admitted that according to record of respondent, petitioner had not been given any compensation although admitted that petitioner had given demand notice which was replied *vide* reply Ex. PW1/D. On the other hand, PW1 has deposed contrary to version of the respondent RW1 as petitioner specifically admitted that respondent had paid retrenchment compensation as well as notice in January, 2004. As such, when petitioner himself had admitted to have received notice from respondent as well as compensation from respondent, it could not be stated that respondent had violated Section 25-F of the Act.

13. In so far as violation of Section 25-G of the Act is concerned, reliance has placed on cross-examination of RW1 Shri Pramod Kashyap, Executive Engineer, HPPWD Division Dharampur who is in unequivocal terms admitted on oath that all the workmen mentioned in para

No.3 of the claim petition were junior to petitioner who had been regularized. Be it stated that petitioner has relied upon Ex. PW1/C the list of daily waged beldars transferred from Dharampur to other Division as per court order were factually senior to petitioner as they were shown to have been engaged prior to 2000 whereas the workmen at serial No. 1 to 11 between 1998 and 1999 and thus it could not be stated that juniors were retained or regularized in service. At the same time, respondent too has not produced any seniority list by which determined the workmen who junior to petitioner when his service had been terminated by respondent rather evidence on record shows that there were large scale retrenchment carried out by HPPWD Division Dharampur but the plea of doctrine of 'Last come First go' could be established only with the help of seniority list but the respondent had not circulated the same or brought in evidence while being examined before this court. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. Vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared failing which the same shall be violation of Section 25-G of the Act. As such, non-production of seniority list by respondent and at the same time admitting that workers mentioned in para No.(3) of claim petition were junior to petitioner had been regularized in service clearly established that respondent had violated provisions of Section 25-H of the Act. Moreover, to prove Section 25-H of the Act, it is not necessary that petitioner should have worked for 240 days as has been held in **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419**. In so far as claim of petitioner qua back wages is concerned, petitioner has alleged that he has remained unemployed ever since his service had been terminated in the year 2004 by respondent but cross-examination of PW1 reveals that he had cultivable land by which petitioner had source of income. Ld. Dy. D.A. for the respondent has contended that full back wages cannot be granted by court in automatic manner rather in view of judgment of Hon'ble Apex Court reported in **2014 (140) FLR 901 (SC)** titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal**, several factors are to be considered by court while granting relief of back wages. Since PW1 himself has admitted in cross-examination that he had cultivable land, it could not be inferred that petitioner had no income from any source. Accordingly, petitioner is held not entitled for back wages although respondent is held to have violated provisions of Section 25-H of the Act and thus petitioner would be entitled for relief of reinstatement seniority and continuity in service.

14. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Dy. D.A., Ld. Counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another, Vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally

raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on the ground of delay and laches. Issues No. 1 to 3 in question thus is accordingly answered in negative against respondent and in favour of petitioner. All these issues are answered accordingly.

Issue No. 4 :

15. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

16. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. In the peculiar circumstances of the case, the parties are left to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of June, 2018.

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
(Camp at Mandi).

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.

Ref. No.: 692/2016
 Date of Institution : 03-10-2016
 Date of Decision : 29-06-2018

Shri Sarveet Singh s/o Shri Birbal r/o Village Bhatehar, P.O. Passu, Tehsil Dharamshala, District Kangra, H.P.*Petitioner.*

Versus

The Divisional Forest Officer, Dharamshala Forest Division, Dharamshala, District Kangra, H.P.*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Sushil Jamwal, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Sarveet Singh s/o Shri Birbal r/o Village Bhatehar P.O. Passu, Tehsil Dharamshala, District Kangra, H.P. during 02/2009 by the Divisional Forest Officer, Dharamshala Forest Division Dharamshala, District Kangra, H.P. who had worked on daily wages basis and has raised his industrial dispute nearly after about 5 years *vide* demand notice dated 17-01-2014, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of about 5 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as daily waged beldar by the respondent in the year 1998 who continued to work till March, 2009 with intermittent breaks. It is alleged that respondent/department had illegally terminated service of petitioner several time by passing oral order and during the entire period, breaks had been given with the object so that petitioner did not complete 240 days. It is alleged that petitioner finally terminated service of petitioner in the month of March, 2009 without assigning any reason or notice. Not only this, even juniors were retained in service whereas petitioner had been terminated in violation of principle of ‘Last come First go’ envisaged under Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called the ‘Act’ for brevity). The grievance of petitioner remains that despite having rendered service for more than 240 days in each year he had not been issued any notice *qua* termination and wages in lieu thereof in violation of provisions of Section 25-F of the Act. It is also alleged that respondent had not obtained approval of govt. prior termination of service of petitioner besides divisional level seniority list of daily waged workmen working under respondent/department had not been circulated. It is claimed that petitioner had been rendering service to respondent with full devotion to the respondent who without any rhyme or reason terminated his service. It is also claimed that petitioner had completed eight years of continuous service which petitioner entitles for regularization *w.e.f.* 30.9.2006 as per the policy of the government. Accordingly, alleging violation of Section 25-F, 25-G and 25-H of the Act, petitioner seeks his reinstatement in service with seniority, continuity in service and all consequential benefits from date of his illegal termination from service besides that he has prayed for setting aside verbal order dated March, 2009 *vide* which petitioner was retrenched and has also prayed for regularization having completed eight years of service in view of regularization policy in CWP no.2735/2008 titled as Rakesh Kumar vs. State of H.P. & Ors.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits admitted to the extent that petitioner was engaged on muster roll basis as daily waged worker however denied that petitioner had worked continuously till March, 2009 rather petitioner had worked

intermittently *w.e.f.* September, 1998 to February, 2009 and had left the work at his own sweet will who never returned for job. It has been emphatically denied that respondent had illegally terminated service of petitioner and given intermittent breaks as claimed so that petitioner did not complete 240 days as envisaged under Section 25-B of the Act. It is also contended that since at no point of time petitioner had not completed 240 in any calendar year there was no necessity to issue notice or pay wages in lieu thereof and thus provisions of Section 25-F of the Act was not violated. It has been denied that junior had been engaged or retained by respondent and thus there was no violation of principle of 'Last come First go' which attracted Section 25-G of the Act. It is contended that all those workmen who had been engaged were entitled in pursuance to order of this court or on compassionate ground or those who converted from part-time to daily wager. As such, no junior to the petitioner had been appointed or retained by the respondent. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, copy of letter dated 11.7.1995 Ex. PW1/B, copy of attendance of petitioner Mark X, copy of receipts Ex. PW1/C, copy of notice Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pradeep Bhardwaj, Divisional Forest Officer, Dharamshala, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B, copy of seniority list Ex. RW1/C, copy of letter dated 21.5.2004 Ex. RW1/D, copy of letter dated 24.5.2004 Ex. RW1/E, copy of letter dated 16.7.2008 Ex. RW1/F and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 11.10.2017 for determination which are as under:

1. Whether termination of the services of petitioner by the respondent during February, 2009 is/was improper and unjustified as alleged? ...OPP.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ...OPR.
4. Whether the claim petition is bad on ground of delay and laches as alleged? ...OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. To prove violation of Section 25-F of the Act, petitioner has stepped into witness box as PW1 sworn in affidavit Ex. PW1/A reiterating his stand as maintained in the claim petition *qua* having worked for 240 days in each calendar year. In cross-examination he has denied that he had not worked for 240 days or more in preceding 12 months from date of termination. He has also denied that he of his own came for work and left the work assigned by respondent who did not give any artificial breaks. Be it stated that petitioner had specifically admitted in his cross-examination that respondent had not appointed any junior to him which *prima facie* establish that there was no violation of Section 25-H of the Act. On the other hand, RW1 Shri Pradeep Bhardwaj, DFO Dharamshala the respondent has testified on oath has stated that petitioner had not been given intermittent breaks deliberately by respondent and thus petitioner had not completed 240 days. To substantiate his claim, respondent had placed reliance upon Ex. RW1/B which shows year-wise attendance of petitioner from 1998 till 2009. This document showed working days of petitioner and it can be safely inferred that in year 2008 petitioner had factually worked merely for 61 days and in the year 2009 petitioner had worked for 63 days in all which goes to show that petitioner had not completed 240 days even in preceding 12 months from date of retrenchment. As such, from oral evidence as well as documentary evidence on record, it cannot be inferred that petitioner had worked for 240 days attracting provisions of Section 25-F of the Act requiring issuance of one month's notice or wages in lieu thereof. In so far as allegation of petitioner having given intermittent breaks by respondent is concerned, reliance has been placed upon seniority list Ex. RW1/C which showed that all the workmen/daily wager as stood on 31.12.2016 in respect of Dharamshala Forest Division were either appointed on compassionate ground or on the basis of order of the court or from handicapped quota as reflected in seniority list. Reliance has also been placed upon Ex. RW1/D dated 3rd June, 2004 which shows that government had approved engaging legal heirs of deceased daily wagers on the basis of compassionate ground. Similarly, Ex. RW1/E reveals notification *qua* filling posts of reserved for visually handicapped person under 1% reservation as provided under Persons with Disabilities Act, 1995. Ex. RW1/F further strengthens the plea of respondent in as much as it provides policy to regulate the service of part-time workmen. Thus, all these documents coupled with seniority list Ex. RW1/C relied upon by respondent clearly establishes that no daily wagers as reflected in seniority list which stood 31st December, 2016 had been appointed from general/open quota. As such, from the documentary as well as oral evidence on record, it can be safely concluded that no one junior to petitioner had been retained or petitioner was given intermittent break deliberately by respondent and as such plea of intermittent breaks given by respondent which allegedly violated provisions of Section 25-B is not at all proved by petitioner.

12. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 2009. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. Ld. Dy. D.A. for the State has contended that even if the

respondent has not been able to prove abandonment of job by respondent as required under law yet petitioner was not absolved from his accountability to prove to have worked for a minimum period of 240 days in preceding 12 months from date or month of termination. In view of the foregoing, it is held that respondent has not violated Section 25-F of the Act who was not required to issue any notice or pay compensation as contended by petitioner.

13. In view of specific admission of petitioner as PW1 *qua* non-engagement of any junior to petitioner ever since termination and that respondent had engaged or retained only those persons in service as per policy of the government. Thus, petitioner has neither proved intermittent breaks nor respondent having violated the procedure of retrenchment as envisaged under Section 25-G of the Act. In view of foregoing discussions inference of respondent having violated Section 25-H of the Act also cannot be drawn more specifically from in cross-examination of petitioner as PW1 when all the persons reflected in seniority list had been proved to be junior to petitioner as required under law as the workmen who were mentioned in the seniority list were factually engaged as per specific policy of the government and there was no necessity for issuance of any notice to petitioner for engagement after his retrenchment. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, it is not necessary that petitioner should not have worked 240 days does help petitioner. In view of foregoing discussions, issues No. 1 and 2 are answered in negative in favour respondent and against petitioner.

Issue No. 3 :

14. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

15. Ld. Dy. D.A. representing respondent/department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. The respondent in cross-examination has admitted that petitioner did not give any representation from the date of his termination *i.e.* 2009 till the year 2014 but this admission *ipso facto* would not eclipse claim of petitioner as he had issued demand notice in 2014 whereas he had been retrenched on 2009. As such, respondent could not be stated to have delayed in raising dispute as he has alleged person and who would not the implication but at the same time law remained on the point of limitation which does not debarred petitioner from seeking of reinstatement or rather this factor to be considered by this court while in view of the directions of the Hon'ble Apex Court in 2013. As such, when delay itself could not be a ground for declining the relief, this court of the view that claim petition is not bad on the ground of delay and laches. Accordingly, this issue is answered in favour of petitioner and against the respondent.

Relief :

16. As a sequel to my findings on foregoing Issues No.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of June, 2018.

K. K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA H.P.

Ref. No.: 259/2014
 Date of Institution : 14-8-2014
 Date of Decision: 30-06-2018

Shri Parminder Kumar s/o Shri Sagli Ram, r/o Village Lower Dehlan, Tehsil & District Una, H.P.*Petitioner.*

Versus

The Employer/Factory Manager, M/s Nestle India Limited, VPO Nangal Kalan, Industrial Area Tahliwal, District Una, H.P.*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner	: Sh. R.K. Singh Parmar, AR
For the Respondent	: Sh. Rajeev Kumar Sharma, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Parminder Kumar, s/o Shri Sagli Ram, r/o Village Lower Dehlan, Tehsil & District Una, H.P. *w.e.f.* 11-02-2013 by and the Employer/Factory Manager, M/s Nestle India Limited, V.P.O. Nangal Kalan, Industrial Area Tahliwal, District Una, H.P. on account of resignation dated 11-02-2013, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Averments made in the claim petition reveal that petitioner above named had joined respondent as Engineering Technician on 4.4.2012 where he continued to work till 11.2.2013. It further transpires from the claim petition that petitioner was on probation whose services were

allegedly terminated after completion of probation period. The allegation as contained in the claim petition also revealed that work and conduct of the petitioner was satisfactory and there was no complaint against his work and conduct while working with respondent. It is claimed that on 11.2.2013 respondent had forcibly obtained resignation from petitioner against his wishes as service of petitioner could not have been terminated without procedure envisaged under provisions of the Industrial Disputes Act, 1947 (hereinafter called the 'Act' for brevity) and that service of petitioner was governed under Standing Orders Act, 1947 according to which he had become permanent employee of establishment of respondent. It is also claimed that termination by taking resignation forcibly is an unfair labour practice as resignation had been taken by respondent from him forcibly and against his post a new employee has been appointed by respondent whose name was not mentioned as was intended to be disclosed at the time of evidence. Accordingly, alleging termination to be on hire and fire basis besides being unfair labour practice petitioner has prayed for setting aside termination *w.e.f.* 11.2.2013 and he may be deemed to be in service besides prayed for reinstatement in service with full back wages as petitioner had not remained gainfully employed.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petitioner having not come to the court with clean hands and that reference in question has been received from appropriate govt. is infact has not been issued by competent authority. On merits admitted that petitioner was engaged as Engineering Technician on probation from 4.4.2012 which was extended due to non- performance besides denied that work and conduct of the petitioner was satisfactory. Asserted that petitioner had tendered his resignation on 11th February, 2013 of his own will without any pressure from any side which had been accepted by the respondent and thereafter full and final dues of petitioner had been released by him. It is alleged that petitioner had received full and final settlement in March, 2013 besides had also received bonus on 14th March, 2013 *vide* demand draft No. 293944 dated 15.5.2013. It is alleged that petitioner submitted forms of withdrawal of Employees Provident Fund with requesting to respondent to put the seal and signature over it and copies of these forms also attached with the reply of respondent. It has been specifically asserted that resignation in question is in handwriting of the petitioner besides denied that any pressure was built upon petitioner by the respondent to resign and that present claim petition was afterthought however asserted that petitioner was gainfully employed. It is further alleged that respondent had about 314 workers in the unit and there was no reason for the respondent to have built any pressure to petitioner alone to resign from service. It is also stated that in pursuance to demand notice from petitioner, respondent had filed reply before the Conciliation Officer, Una along-with documents. Further denied that respondent had not come to the court with clean hands and further asserted that service of petitioner had been terminated rather petitioner of his own voluntarily tendered resignation besides denied that any new incumbent has been appointed in place of petitioner. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sachin Thakur, Dy. Manager (Liaison and IR) M/s Coslight India Telecom (P) Ltd. Dhamandri, Una. RW2 Shri Yadvender Vasudev, Manager (HR) of respondent company as RW1, tendered/proved Ex. R1 original resignation letter dated 11.2.2013, Ex. R2 details of full and final settlement receipt of Rs.12,535/-, statutory bonus receipt Ex. R3 from 4th April, 2012 to 11th February, 2013, Ex. R4 cheque *qua* withdrawal of bonus dated 15.5.2013, Ex. R5-1 to Ex. R-5-5 various documents filed by petitioner so as to obtain seal and signature for withdrawal of EPF deposited in account, Ex. RW1/B authority letter, copy of letter dated 17.4.2014 Ex. RW1/C and closed evidence.

7. I have heard the ld. counsel of petitioner and ld. Counsel for respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 03.9.2015 for determination which are as under:

1. Whether termination of the services of the petitioner by the respondent *w.e.f.* 11.2.2013 is/was improper and unjustified as alleged? ...OPP.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ...OPR.
4. Whether the petitioner has not come to the court with clean hands as alleged? ...OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1: No

Issue No. 2 : No

Issue No. 3 : Yes

Issue No. 4 : No

Relief: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into witness box as PW1 petitioner Parminder Kumar has sworn in affidavit Ex. PW1/A reiterating his stand as maintained in the claim petition. The case of the petitioner simplicitor remains that resignation Ex. R1 dated 11.2.2013 had been forcibly obtained without his consent by respondent whereas the plea of the respondent remains that the petitioner has tendered resignation Ex. R1 voluntarily after understanding its consequence and thus plea of petitioner that he was illegally terminated is not at all tenable. Be it stated that petitioner in his claim petition on the one hand has specifically alleged that his resignation had been forcibly obtained by respondent and at the same time, it is also claimed in same petition that his service had been illegally terminated which was unfair labour practice. The allegation of claimant that his resignation Ex. R1 was forcibly obtained *prima facie* does not meet requirement of Order 6 Rule 4 CPC which postulates that party alleging force or coercion or fraud specific, pleading is required detailing the manner in which document in question *i.e.* resignation Ex. R1 was obtained forcibly and by whom besides place, date, time and if any witness was present. It may not be erroneous to mention here that claim petition did not stipulate anything about manner resignation was forcibly obtained but while leading evidence petitioner had made futile attempt to introduce names of several persons

which were not mentioned in claim petition but claimed to be present when the resignation Ex. R1 was being obtained forcibly or under pressure by respondent. It would be relevant to refer to para No. 5 of the affidavit Ex. PW1/A in which the petitioner has specifically alleged names of five persons Vikesh Kumar (store operator), Munish Kumar (Store Operator), Karan Kumar (Store Operator), Vipin Kumar (Helper), Ajay Kumar (Helper), Ajit Singh (Helper) and Satinder Kumar who were present when resignation in question was forcibly obtained but significantly none of these were examined without any reason or plausible explanation for which an adverse inference deserves to be drawn against claim of petitioner having withheld best evidence available with petitioner. Be it stated that petitioner has closed evidence on 11.3.2016 without making any stipulation for not examining any one of these witnesses which necessarily follows that while filing claim petition, petitioner had not mentioned names of above named in whose presence resignation in question was allegedly obtained using pressure or force but while leading evidence names of few workers of the respondent company as mentioned in his affidavit were introduced but unfortunately none of them had been examined which could lend credence to the testimony of petitioner. From such like circumstance as has come in evidence, resignation Ex. R1 has factually not been forcibly obtained rather resignation in question manifestly appears to be voluntarily made by petitioner.

12. RW2 Shri Yadvender Vasudev, representing Factory Manager/respondent company has refuted allegation of obtaining resignation Ex. R1 forcibly or under pressure. Even in cross-examination of RW2 Shri Yadvender Vasudev, no suggestion has been put by Id. Authorized Representative of petitioner that so many persons as stated in para No. 5 of the affidavit Ex. PW1/A were present when Ex. R1 was obtained forcibly irrespective of fact that RW2 Manager HR of respondent has admitted that Ex. R1 did bear his signature. Be it stated that RW2 clarified in cross-examination that when resignation Ex. R1 was given by petitioner he did not work with respondent as he had joined on 14.2.2012. It is equally important to mention here that Id. Authorized Representative for petitioner has not put any suggestion to RW2 with regard to forcibly obtaining resignation or obtaining under pressure in presence of five witnesses as mentioned in Ex. PW1/A were present which necessarily falsified the stand taken by petitioner.

13. Id. Counsel for the respondent has relied upon judgment titled as **Hira Mills, Ujjain Vs. Babu and two Others** reported in **1998 LLR 524**, in which judgment Hon'ble High Court of Madhya Pradesh has held that employee who alleges that resignation was not tendered voluntarily the burden of proof lies upon employee. Reliance has further been placed on judgment of Hon'ble Apex Court titled as **North Zone Cultural Centre & Anr. Vs. Vedpathi Dinesh Kumar** reported in **2003 LLR 583**. In the said judgment, Hon'ble Apex Court has held that non-communication of acceptance of resignation does not make it inoperative provided there is in fact an acceptance before withdrawal. Id. Counsel for respondent has placed reliance upon another judgment of Hon'ble Apex Court reported in **AIR 1990 Supreme Court 1808** titled as **M/s. J.K. Cotton Spg. & Wvg. Mills Company Ltd., Kanpur Vs. State of U.P. and Ors.**, in which Hon'ble Apex Court has held that where employee tendered resignation, **termination of service by employer by resignation does not amount to retrenchment**. On the other hand, Id. Authorized Representative for the petitioner has relied upon judgment titled as **Shree Pal Kaushik vs. Presiding Officer, Labour Court-cum-Industrial Tribunal-I, Gurgaon and Anr.** reported in **2014(1) RSJ 443**.

14. I have gone through the above referred judgments relied upon by the parties. In 1990 (*supra*) relied upon by the respondent, the Hon'ble Apex Court while dealing with definition of Section 2(oo) read with Section 25-F of the Act has held that **resignation does not amount to termination**. By applying ratio of judgments aforstated, it cannot be stated that petitioner had been retrenched from service by respondent particularly when there exist reliable evidence on record establishing that resignation Ex. R1 was voluntarily tendered. In 1998 judgment (*supra*) Hon'ble Madhya Pradesh High Court has held that burden of proof on plea of resignation being not done voluntarily lied upon the petitioner but in the case in hand the petitioner has not at all discharged this onus and bald assertion of petitioner on oath he was made to forcibly sign resignation Ex. R1

cannot be accepted moreso when there is ample evidence on record to show that petitioner had not only voluntarily resigned from service but had also accepted full and final settlement as well as also statutory bonus. Not only this, he had also withdrawn amount of statutory bonus from 4.4.2012 to 11.2.2013 *vide* cheque No. 293944 dated 15.5.2013 Ex. R4 which is the cheque issued by respondent to petitioner and the petitioner in his statement on oath had admitted to have withdrawn this amount. Significantly, petitioner in cross-examination has admitted that he had tendered resignation Ex. R1 voluntarily which was denied in claim petition. Not only this, he has admitted that he had not reported the matter to any one when this resignation was forcibly obtained. As such, version of the petitioner that he had been made to forcibly resign cannot be accepted. In its reply Ex. RW1/C dated 17.4.2014 to Labour Officer, Una in pursuance to demand notice, the plea of respondent in his reply to the demand notice as well as to claim petition was the same and there is no material contradiction or improvement. Be it stated that petitioner had received all his dues as he received full and final settlement receipt of Rs.12,535/- as well as statutory bonus of receipt of Rs.7205/- Ex. R5-1 to Ex. R5-5 are the withdrawal of Employees Provident Fund submitted by petitioner to respondent after his resignation by obtaining seal and signature of the respondent. Thus, the conduct of petitioner in receiving all dues promptly after resignation manifestly established voluntary character of resignation letter Ex. R1. It is also apt to mention here that respondent had examined RW1 Shri Sachin Thakur, Dy. Manager (Liaison and IR) working with M/s. Coslight India Telecom (P) Ltd. who has proved that petitioner had been appointed in his company *vide* appointment letter Ex. RW1/A and was drawing monthly Rs.19,236/- and presently appointed as Operator Boiler. As such, respondent in his subsequent employment had better package who cannot be stated to have remained unemployed rather falsity of petitioner's case get surfaced not only from facts revealed in his cross-examination but also from evidence adduced by respondent as discussed above. In such like situation, it cannot be stated that petitioner has not suppressed material facts. In view of foregoing discussions, issues No. 1 and 2 are answered in negative whereas issue No. 4 is answered in affirmative. All these issues are answered against petitioner and in favour of respondent.

Issue No. 3 :

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had voluntarily resigned *vide* resignation letter dated 11.2.2013 and after acceptance of resignation by respondent, petitioner has ceased to be employee of respondent but when petitioner has resigned he cannot be stated to be illegally terminated in view of judgment of Hon'ble Apex Court 1990 (*supra*). Accordingly, present claim petition is held to be not maintainable. Issue is answered in affirmative in favour of respondent and against petitioner.

Relief :

16. As a sequel to my findings on foregoing issues No.1, 2 and 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of June, 2018.

K .K. SHARMA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

No. 457 Date : 29-04-2019.

मुकद्दमा संख्या : 06 / 2019

तारीख मरजुआ : 04-04-2019

तारीख पेशी : 03-07-2018

श्री शंकर उर्फ शंकर लाल पुत्र स्व० श्री हरी राम पुत्र कदारू, गांव रंगोल, डाकघर कोहबाग, उप-तहसील धामी, जिला शिमला, हिंगोल प्र०।

राजस्व अभिलेख में नाम दरूस्ती बारे प्रार्थना-पत्र।

इस मुकद्दमे का संक्षिप्त सार यह है कि उपरोक्त प्रार्थी श्री शंकर उर्फ शंकर लाल पुत्र स्व० श्री हरी राम पुत्र कदारू, गांव रंगोल, डाकघर कोहबाग, उप-तहसील धामी, जिला शिमला, हिंगोल प्र० ने प्रार्थना-पत्र इस आशय के साथ इस अदालत में प्रस्तुत किया है कि भू-राजस्व अभिलेख मौजा रंगोल में प्रार्थी के पिता का नाम हीरू राम पुत्र कदारू दर्ज कागजात है जो कि गलत है जबकि शपथ-पत्र, आधार कार्ड, भारत निर्वाचन आयोग पहचान-पत्र, शैक्षणिक प्रमाण-पत्र जो पुत्र के द्वारा लगाये गये हैं व व्यानात वाशिन्दगान देह के अनुसार प्रार्थी के पिता का नाम हरी राम पुत्र कदारू है जो कि सही है।

अतः इश्तहार द्वारा सूचित किया जाता है कि यदि किसी को भी उपरोक्त मुकद्दमा नाम दरूस्ती बारे कोई भी उजर व एतराज हो तो स्वयं या लिखित तौर पर दिनांक 31-05-2019 को अपराह्न 2.00 बजे हाजिर अदालत आकर अपना एतराज पेश करें, अन्यथा यह समझा जायेगा कि किसी भी व्यक्ति को इस मुकद्दमा नाम दरूस्ती बारे कोई उजर एतराज न है तथा आवेदन-पत्र को अन्तिम रूप दिया जायेगा व एकतरफा कार्यवाही अमल में लाई जाएगी।

आज तारीख 22-04-2019 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी किया गया।

मोहर।

हस्ताक्षरित/-
सहायक समाहर्ता द्वितीय श्रेणी,
उप-तहसील धामी, जिला शिमला, हिंगोल प्र०।

ब अदालत दिनेश कुमार, सहायक समाहर्ता द्वितीय श्रेणी कोटगढ़, जिला शिमला, हिंगोल प्र०

बाद संख्या : 3 / 2018 तकसीम कानूनी

श्री कुलदीप मेहता पुत्र श्री स्व० द्वारका दास, निवासी जबलपुर, डाकघर जरोल, उप-तहसील कोटगढ़, जिला शिमला, हिंगोल प्र०। वादी।

बनाम

1. श्री ओम प्रकाश पुत्र स्व० श्री जिया लाल
2. श्री दुर्गा सिंह पुत्र स्व० श्री जिया लाल
3. श्री रोशन लाल पुत्र स्व० श्री जिया लाल

सभी निवासीगण ग्राम मझेवटी, डाकघर जरोल, उप-तहसील कोटगढ़, जिला शिमला, हिंगोल प्र०। प्रतिवादीगण।

उपरोक्त मुकद्दमा दावा तकसीम मिसल नं० 3 / 2018 श्री कुलदीप मेहता बनाम ओम प्रकाश आदि बाबत भूमि खाता/खतौनी नं० 58 / 120 खसरा नं० 144 रकबा तादादी 00-16-19 है० वाका चक थीनू अथोहस्ताक्षरी की अदालत में जेरे समायत है। मुकद्दमा हजा में प्रतिवादीगण के समनात की तामील साधारण तरीके से नहीं हो पा रही है।

अतः सभी प्रतिवादीगण श्री आम प्रकाश, श्री श्री दुर्गा सिंह व श्री रोशन लाल पुत्रगण स्व0 श्री जिया लाल, निवासीगण ग्राम मझेवटी, डाकघर जरोल, उप-तहसील कोटगढ़, जिला शिमला, हिं0 प्र0 को अन्तिम अवसर इस इशतहार के माध्यम से प्रदान किया जाता है कि यदि उक्त प्रतिवादीगण दिनांक 03-07-2019 को असालतन/वकालतन हाजिर अदालत आकर अपना पक्ष प्रस्तुत करें। हाजिर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 22-05-2019 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /-,
सहायक समाहर्ता, द्वितीय श्रेणी,
कोटगढ़, जिला शिमला (हिं0 प्र0)।

**ब अदालत श्री जसमेर सिंह, कार्यकारी दण्डाधिकारी, तहसील रोहडू, जिला शिमला,
हिमाचल प्रदेश**

श्री मुकेश दत पुत्र श्री रतन देव, निवासी गांव पावली, डाकघर व तहसील रोहडू, जिला शिमला,
हिमाचल प्रदेश प्रार्थी।

बनाम

आम जनता

उनवान मुकदमा—दरख्बास्त जेर धारा 13(3) जन्म एवम् मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत।

इस कार्यालय में श्री मुकेश दत पुत्र श्री रतन देव, निवासी गांव पावली, डाकघर व तहसील रोहडू जिला शिमला, हिमाचल प्रदेश ने प्रार्थना-पत्र गुजार कर निवेदन किया है कि उनकी पुत्री हिमांशी का जन्म दिनांक 30-11-2003 को हुआ है परन्तु अज्ञानतावश इसकी जन्म तिथि को ग्राम पंचायत करालश के जन्म रजिस्टर में आज तक पंजीकृत नहीं करवाया गया है तथा इसकी जन्म तिथि को दर्ज करने के आदेश ग्राम पंचायत करालश को दिये जावें।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी को भी हिमांशी की जन्म तिथि व नाम ग्राम पंचायत करालश में दर्ज करने में किसी भी प्रकार का एतराज/उजर हो तो वह दिनांक 09-06-2019 सांय 5.00 बजे तक असालतन/वकालतन हाजिर होकर लिखित व मौखिक प्रस्तुत करे। यदि उक्त तारीख तक कोई उजर/एतराज प्रस्तुत नहीं हुआ तो यह समझा जावेगा कि प्रार्थी की पुत्री की जन्म तिथि व नाम ग्राम पंचायत करालश में दर्ज करने हेतु कोई आपत्ति नहीं है तथा जन्म तिथि व नाम ग्राम पंचायत करालश में दर्ज करने के आदेश पारित कर दिये जाएंगे।

आज तारीख 10-05-2019 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी किया गया।

मोहर।

जसमेर सिंह,
कार्यकारी दण्डाधिकारी रोहडू
जिला शिमला (हिं0 प्र0)।

ब अदालत श्री जसमेर सिंह, कार्यकारी दण्डाधिकारी, तहसील रोहडू, जिला शिमला,
हिमाचल प्रदेश

श्री मुकेश दत पुत्र श्री रतन देव, निवासी गांव पावली, डाकघर व तहसील रोहडू, जिला शिमला,
हिमाचल प्रदेश प्रार्थी ।

बनाम

आम जनता

उनवान मुकदमा—दरख्बास्त जेर धारा 13(3) जन्म एवम् मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत ।

इस कार्यालय में श्री मुकेश दत पुत्र श्री रतन देव, निवासी गांव पावली, डाकघर व तहसील रोहडू, जिला शिमला, हिमाचल प्रदेश ने प्रार्थना—पत्र गुजार कर निवेदन किया है कि उनके पुत्र यथार्थ का जन्म दिनांक 10—11—2008 को हुआ है परन्तु अज्ञानतावश इसकी जन्म तिथि को ग्राम पंचायत करालश के जन्म रजिस्टर में आज तक पंजीकृत नहीं करवाया गया है तथा इसकी जन्म तिथि को दर्ज करने के आदेश ग्राम पंचायत करालश को दिये जावें ।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी को भी हिमांशी की जन्म तिथि व नाम ग्राम पंचायत करालश में दर्ज करने में किसी भी प्रकार का एतराज/उजर हो तो वह दिनांक 09—06—2019 सांय 5.00 बजे तक असालतन/वकालतन हाजिर होकर लिखित व मौखिक प्रस्तुत करे । यदि उक्त तारीख तक कोई उजर/एतराज प्रस्तुत नहीं हुआ तो यह समझा जावेगा कि प्रार्थी की पुत्री की जन्म तिथि व नाम ग्राम पंचायत करालश में दर्ज करने हेतु कोई आपत्ति नहीं है तथा जन्म तिथि व नाम ग्राम पंचायत करालश में दर्ज करने के आदेश पारित कर दिये जाएंगे ।

आज तारीख 10—05—2019 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी किया गया ।

मोहर ।

जसमेर सिंह,
कार्यकारी दण्डाधिकारी रोहडू
जिला शिमला (हि० प्र०) ।

**In the Court of Niraj Chandla (H.P.A.S), Sub-Divisional Magistrate, Shimla (Urban),
District Shimla, Himachal Pradesh**

Sh. Anil Thapa son of Shri Virender Singh, r/o House No.-3, Tilak Nagar, Boileauganj
Shimla, Tehsil and District Shimla, H.P. . . Applicant.

Versus

General Public

.. Respondent.

Application under section 13(3) of Birth and Death Registration Act, 1969.

Whereas Sh. Anil Thapa son of Shri Virender Singh, r/o House No.-3, Tilak Nagar, Boileauganj Shimla, Tehsil and District Shimla, H.P. has preferred an application to the undersigned for registration of date of birth of himself ANIL THAPA (DOB 03-11-1978) at above address in the record of Municipal Corporation Shimla.

Therefore, this proclamation, the general public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his objection in writing in this court on or before 23-06-2019 failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the Court on this 24th day of May, 2019.

Seal.

NIRAJ CHANDLA (HPAS),
Sub-Divisional Magistrate,
Shimla (Urban), District Shimla.

ब अदालत श्री सत्य पाल शर्मा, नायब—तहसीलदार एवं कार्यकारी दण्डाधिकारी, पझौता
स्थित नौहरी, जिला सिरमौर, हिमाचल प्रदेश

श्री बलदेव सिंह पुत्र भगत राम, निवासी माओना, डाकघर पुलवाहल, तहसील चौपाल, जिला शिमला,
हिमाचल प्रदेश।

बनाम

आम जनता मौजा कोटला बागी, डाकघर कोटला बागी, उप—तहसील पझौता स्थित नौहरी, जिला
सिरमौर (हि० प्र०)।

दरख्खारत जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 बारे।

श्री बलदेव सिंह पुत्र भगत राम, निवासी माओना, डाकघर पुलवाहल, तहसील चौपाल, जिला शिमला,
हिमाचल प्रदेश ने इस अदालत में प्रार्थना—पत्र मय शपथ—पत्र गुजारा है कि उसकी पत्नी श्रीमती वृन्दा की
मृत्यु दिनांक 10—10—2017 को हुई है जिसका इन्द्राज ग्राम पंचायत कोटला बांगी, उप—तहसील पझौता स्थित
नौहरी, जिला सिरमौर (हि० प्र०) में सहवन दर्ज न हुआ है।

अतः इस इश्तहार द्वारा हर आम व खास को सूचित किया जाता है कि यदि किसी को उक्त मृत्यु
तिथि पंचायत अभिलेख में दर्ज करने बारे कोई एतराज हो तो वह तिथि 25—06—2019 को या इससे पूर्व
अदालत में हाजिर होकर अपना एतराज पेश कर सकता है। अन्यथा सम्बन्धित सचिव ग्राम पंचायत को
उपरोक्त मृत्यु तिथि पंचायत रजिस्टर में दर्ज करने के आदेश पारित कर दिए जायेंगे।

आज दिनांक 10—05—2019 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—

कार्यकारी दण्डाधिकारी, एवं नायब तहसीलदार
पझौता स्थित नौहरी, जिला सिरमौर (हि० प्र०)।

ब अदालत श्री आशा राम, कार्यकारी दण्डाधिकारी (ना० तहसीलदार), राजगढ़, जिला सिरमौर
(हि० प्र०)

श्री दलबहादुर पुत्र श्री बलबहादुर, निवासी थानाधार, तहसील राजगढ़, जिला सिरमौर, हि० प्र०

बनाम

आम जनता

उपरोक्त प्रार्थना—पत्र श्री दलबहादुर पुत्र श्री बलबहादुर, निवासी थानाधार, तहसील राजगढ़, जिला सिरमौर, हिंगो प्र० ने आवेदन—पत्र प्रस्तुत करके प्रार्थना की है कि उसका नाम बच्ची के जन्म के समय अस्पताल में दलवीर दर्ज किया गया है जबकि उसके द्वारा प्रस्तुत परिवार नकल, आधार कार्ड में दलबहादुर दर्ज है। अतः प्रार्थी दलवीर के स्थान पर दलबहादुर दर्ज करवाना चाहता है।

इसलिए सर्वसाधारण को इस इश्तहार द्वारा सूचित किया जाता है कि इस सम्बन्ध में यदि किसी व्यक्ति को उजर या एतराज हो तो वह स्वयं अथवा अपने प्रतिनिधि द्वारा मिति 15–06–2019 को सुबह दस बजे अदालत में उपस्थित आकर प्रस्तुत करे। बसूरत दीगर श्री दलबहादुर का सही नाम दर्ज करने के आदेश जारी कर दिये जावेंगे तथा बाद में किसी भी प्रकार का एतराज मान्य नहीं होगा।

आज दिनांक 15–05–2019 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

आशा राम,
कार्यकारी दण्डाधिकारी (नां० तहसीलदार),
राजगढ़, जिला सिरमौर, हिंगो प्र०।

**ब अदालत श्री आशा राम, कार्यकारी दण्डाधिकारी (नां० तहसीलदार), राजगढ़, जिला सिरमौर
(हिंगो प्र०)**

श्री मनोज कुमार पुत्र श्री अनोखी राम, निवासी सैर जगास, तहसील राजगढ़, जिला सिरमौर, हिंगो प्र०

बनाम

आम जनता

उपरोक्त प्रार्थना—पत्र श्री मनोज कुमार पुत्र श्री अनोखी राम, निवासी सैर जगास, तहसील राजगढ़, जिला सिरमौर, हिंगो प्र० ने आवेदन—पत्र प्रस्तुत करके प्रार्थना की है कि उसका नाम राजस्व रिकार्ड में मनोज कुमार के स्थान पर विनोद दर्ज किया गया है जबकि उसके द्वारा प्रस्तुत विद्यालय छोड़ने का प्रमाण—पत्र, परिवार नकल, आधार कार्ड तथा राशन कार्ड में मनोज कुमार दर्ज है। अतः प्रार्थी विनोद के स्थान पर राजस्व रिकार्ड में मनोज कुमार दर्ज करवाना चाहता है।

इसलिए सर्वसाधारण को इस इश्तहार द्वारा सूचित किया जाता है कि इस सम्बन्ध में यदि किसी व्यक्ति को उजर या एतराज हो तो वह स्वयं अथवा अपने प्रतिनिधि द्वारा मिति 30–05–2019 को सुबह दस बजे अदालत में उपस्थित आकर प्रस्तुत करे। बसूरत दीगर श्री मनोज कुमार का सही नाम दर्ज करने के आदेश जारी कर दिये जावेंगे तथा बाद में किसी भी प्रकार का एतराज मान्य नहीं होगा।

आज दिनांक 26–04–2019 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

आशा राम,
कार्यकारी दण्डाधिकारी (नां० तहसीलदार),
राजगढ़, जिला सिरमौर, हिंगो प्र०।

**ब अदालत श्री पी० एल० शर्मा, सहायक समाहर्ता द्वितीय श्रेणी, एवं नायब तहसीलदार,
उप—तहसील हरिपुरधार, जिला सिरमौर (हिंगो प्र०)**

लेख राम पुत्र जोवन दास, निवासी भवाई, उप—तहसील हरिपुरधार, जिला सिरमौर, हिंगो प्र०

बनाम

आम जनता

लेख राम पुत्र जोवन दास, निवासी मौजा व डाकघर भवाई, उप-तहसील हरिपुरधार, जिला सिरमौर, हिंदू प्र० ने इस न्यायालय में जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 की धारा 13(3) के तहत प्रार्थना-पत्र गुजारा है कि उनके पोते अर्णव पुत्र विजेन्द्र का नाम व जन्म तिथि 16-02-2016 गलती से ग्राम पंचायत भवाई में दर्ज करने से छूट गया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी को उपरोक्त नाम व जन्म तिथि दर्ज करने बारा कोई उजर या एतराज हो तो इस प्रकाशन के 15 दिनों के बाद असालतन या वकालतन इस न्यायालय में हाजिर होकर अपना उजर-एतराज प्रस्तुत कर सकते हैं।

आज दिनांक 14-05-2019 को कार्यालय में मेरे हस्ताक्षर से जारी हुए।
मोहर।

पी० एल० शर्मा,

सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार,
उप-तहसील हरिपुरधार, जिला सिरमौर (हिंदू प्र०)।

समक्ष श्री देवी सिंह कौशल, सहायक समाहर्ता (प्रथम श्रेणी), ददाहू, जिला सिरमौर,
हिंदू प्र०

मिसल नं० 14/2019

तारीख संस्थापन 13-05-2019

श्री भगत राम पुत्र श्री मन्दा राम, निवासी ग्राम महीपुर, तहसील ददाहू, जिला सिरमौर, हिंदू प्र०

बनाम

आम जनता

आवेदन-पत्र जेरे धारा 13 (3) जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969.

श्री भगत राम पुत्र श्री मन्दा राम, निवासी ग्राम महीपुर, तहसील ददाहू, जिला सिरमौर, हिंदू प्र० ने इस अदालत में एक दरख्वास्त गुजारी है प्रार्थी की पुत्री अर्चना कुमारी का जन्म 19-04-2004 को हुआ है। जिसका रिकार्ड ग्राम पंचायत महीपुर में दर्ज नहीं किया है। जिसकी पुष्टि हेतु प्रार्थी ने आवेदन-पत्र मय हलफीब्यान, रिकॉर्ड सचिव ग्राम पंचायत महीपुर तथा जिला रजिस्ट्रार (जन्म एवं मृत्यु) एवं मुख्य चिकित्सा अधिकारी नाहन, जिला सिरमौर की संस्तुति प्रस्तुत की है। प्रार्थी अब अपनी पुत्री अर्चना कुमारी का नाम व जन्म तिथि 19-04-2004 को ग्राम पंचायत महीपुर के मूल रिकार्ड में दर्ज करवाना चाहता है।

अतः इस नोटिस द्वारा समस्त जनता ग्राम महीपुर व प्रार्थी के समस्त रिश्तेदारों को सूचित किया जाता है कि यदि किसी को उक्त प्रार्थी की पुत्री अर्चना कुमारी का नाम व जन्म तिथि 19-04-2004 को ग्राम पंचायत महीपुर के रिकार्ड में दर्ज करने बारे उजर व एतराज हो तो वह दिनांक 12-06-2019 को असालतन व वकालतन हाजिर होकर अपना एतराज पेश कर सकता/सकती है। उसके उपरान्त कोई उजर व एतराज नहीं सुना जाएगा और नियमानुसार प्रार्थना-पत्र का निपटारा कर दिया जाएगा।

आज दिनांक 14-05-2019 को मेरे हस्ताक्षर एवं कार्यालय की मोहर द्वारा जारी किया गया।

मोहर।

देवी सिंह कौशल
सहायक समाहर्ता प्रथम श्रेणी,
तहसील ददाहू, जिला सिरमौर, हिंदू प्र०।

ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिं प्र०

श्री Mustak पुत्र श्री Ali Hussain, निवासी Gujjar Colony Naurangabad, तहसील पांवटा साहिब, जिला सिरमौर, हिं प्र० वादी।

बनाम

आम जनता

प्रतिवादी

प्रकरण संख्या : 9813

उनवान मुकद्दमा—प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री Mustak पुत्र श्री Ali Hussain, निवासी Gujjar Colony Naurangabad, तहसील पांवटा साहिब, जिला सिरमौर, हिं प्र० ने एक प्रार्थना—पत्र प्रस्तुत करके निवेदन किया है कि आवेदक किन्हीं कारणों से अपने पुत्र Aslam की जन्म तिथि 03–03–2015 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाया है। इस बारे आवेदक द्वारा एक ब्यान हल्कि भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ—पत्र भी आवेदक ने अपने प्रार्थना—पत्र के साथ संलग्न किये हैं। आवेदक ने ग्राम पंचायत Daula Kuan में अपने ऊपर वर्णित पुत्र की जन्म तिथि 03–03–2015 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को Aslam की जन्म तिथि ग्राम पंचायत Daula Kuan, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिती 01–06–2019 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त Aslam की जन्म तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 01–05–2019 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर, हिं प्र०।

ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिं प्र०

श्रीमती Sunita Devi पत्नी श्री Mohan Singh, निवासी Kulthina, तहसील पांवटा साहिब, जिला सिरमौर, हिं प्र० वादी।

बनाम

आम जनता

प्रतिवादी

प्रकरण संख्या : 8771

उनवान मुकद्दमा—प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्रीमती Sunita Devi पत्नी श्री Mohan Singh, निवासी Kulthina, तहसील पांवटा साहिब, जिला सिरमौर, हिं प्र० ने एक प्रार्थना—पत्र प्रस्तुत करके निवेदन किया है कि आवेदिका किन्हीं कारणों से अपनी

पुत्री Ritika Tomer जिसकी जन्म तिथि 15–10–2015 है का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित नगरपालिका परिषद् में दर्ज नहीं करवाया गया है इस बारे आवेदिका द्वारा एक व्यान हल्फ भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ—पत्र भी आवेदिका ने अपने प्रार्थना—पत्र के साथ संलग्न किये हैं। आवेदिका ने नगरपालिका परिषद् Paonta में अपनी ऊपर वर्णित पुत्री की जन्म तिथि 15–10–2015 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को Ritika Tomer की जन्म तिथि नगरपालिका परिषद् Paonta, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिती 01–06–2019 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त Ritika Tomer की जन्म तिथि को सम्बन्धित नगरपालिका परिषद् में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 1–05–2019 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर, हिं0 प्र0।

ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिं0 प्र0

श्री Sadhu Ram पुत्र श्री Sabla Ram, निवासी Salwala, तहसील पांवटा साहिब, जिला सिरमौर, हिं0 प्र0 वादी।

बनाम

आम जनता

प्रतिवादी

प्रकरण संख्या : 261

उनवान मुकद्दमा—प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री Sadhu Ram पुत्र श्री Sabla Ram, निवासी Salwala, तहसील पांवटा साहिब, जिला सिरमौर, हिं0 प्र0 ने एक प्रार्थना—पत्र प्रस्तुत करके निवेदन किया है कि आवेदक किन्हीं कारणों से अपनी पुत्री Sheetal की जन्म तिथि 12–02–2011 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाया है। इस बारे आवेदक द्वारा एक व्यान हल्फ भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ—पत्र भी आवेदक ने अपने प्रार्थना—पत्र के साथ संलग्न किये हैं। आवेदक ने ग्राम पंचायत Dobri Salwala में अपनी ऊपर वर्णित पुत्री की जन्म तिथि 12–02–2011 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को Sheetal की जन्म तिथि ग्राम पंचायत Dobri Salwala, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिती 1–06–2019 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त Sheetal की जन्म तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 01–05–2019 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर, हिंगसु ०४०।

ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिंगसु ०४०

श्री Ravi पुत्र श्री Gurdyal, निवासी Ghutnupur, तहसील पांवटा साहिब, जिला सिरमौर, हिंगसु ०४० प्रतिवादी।

बनाम

आम जनता

प्रतिवादी

प्रकरण संख्या : 6087

उनवान मुकद्दमा—प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री Ravi पुत्र श्री Gurdyal, निवासी Ghutnupur, तहसील पांवटा साहिब, जिला सिरमौर, हिंगसु ०४० ने एक प्रार्थना—पत्र प्रस्तुत करके निवेदन किया है कि आवेदक किन्हीं कारणों से अपनी पुत्री Radha की जन्म तिथि 02–12–1995 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाया है। इस बारे आवेदक द्वारा एक व्यान हल्कि भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ—पत्र भी आवेदक ने अपने प्रार्थना—पत्र के साथ संलग्न किये हैं। आवेदक ने ग्राम पंचायत Patlion में अपनी ऊपर वर्णित पुत्री की जन्म तिथि 02–12–1995 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को Radha की जन्म तिथि ग्राम पंचायत Patlion तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिति 01–06–2019 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त Radha की जन्म तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 01–05–2019 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर, हिंगसु ०४०।

ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिंगसु ०४०

श्री Ravi पुत्र श्री Gurdyal, निवासी Ghutnupur, तहसील पांवटा साहिब, जिला सिरमौर, हिंगसु ०४० प्रतिवादी।

बनाम

आम जनता

प्रतिवादी

प्रकरण संख्या : 6087

उनवान मुकद्दमा—प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री Ravi पुत्र श्री Gurdyal, निवासी Ghutnupur, तहसील पांवटा साहिब, जिला सिरमौर, हि०प्र० ने एक प्रार्थना—पत्र प्रस्तुत करके निवेदन किया है कि आवेदक किन्हीं कारणों से अपनी पुत्री Kamini की जन्म तिथि 10—05—2005 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाया है। इस बारे आवेदक द्वारा एक व्यान हल्कि भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ—पत्र भी आवेदक ने अपने प्रार्थना—पत्र के साथ संलग्न किये हैं। आवेदक ने ग्राम पंचायत Patlion में अपनी ऊपर वर्णित पुत्री की जन्म तिथि 10—05—2005 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को Kamini की जन्म तिथि ग्राम पंचायत Patlion तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिती 1—06—2019 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त Kamini की जन्म तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 01—05—2019 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर, हि० प्र०।

ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हि० प्र०

श्रीमती Rama Kumari पुत्री श्री Bhagwan Singh, निवासी Kolar, तहसील पांवटा साहिब, जिला सिरमौर, हि० प्र० वादी।

बनाम

आम जनता

प्रतिवादी

प्रकरण संख्या : 441

उनवान मुकद्दमा—प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्रीमती Rama Kumari पुत्री श्री Bhagwan Singh, निवासी Kolar, तहसील पांवटा साहिब, जिला सिरमौर, हि० प्र० ने एक प्रार्थना—पत्र प्रस्तुत करके निवेदन किया है कि आवेदिका किन्हीं कारणों से अपनी (Rama Kumari की) जन्म तिथि 03—06—1971 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाई है। इस बारे आवेदिका द्वारा एक व्यान हल्कि भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ—पत्र भी आवेदिका ने अपने प्रार्थना—पत्र के साथ संलग्न किये हैं। आवेदिका ने ग्राम पंचायत Kolar में अपनी जन्म तिथि 3—06—1971 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को Rama Kumari की जन्म तिथि ग्राम पंचायत Kolar, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिती 01–06–2019 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त Rama Kumari की जन्म तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 01–05–2019 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर, हिं0 प्र0।

ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिं0 प्र0

श्री Sadhu Ram पुत्र श्री Sabla Ram, निवासी Salwala, तहसील पांवटा साहिब, जिला सिरमौर, हिं0 प्र0 वादी।

बनाम

आम जनता

प्रतिवादी

प्रकरण संख्या : 261

उनवान मुकद्दमा—प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री Sadhu Ram पुत्र श्री Sabla Ram, निवासी Salwala, तहसील पांवटा साहिब, जिला सिरमौर, हिं0 प्र0 ने एक प्रार्थना—पत्र प्रस्तुत करके निवेदन किया है कि आवेदक किन्हीं कारणों से अपनी पुत्री Saniya की जन्म तिथि 1–04–2012 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाया है। इस बारे आवेदक द्वारा एक व्यान हल्कि भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ—पत्र भी आवेदक ने अपने प्रार्थना—पत्र के साथ संलग्न किये हैं। आवेदक ने ग्राम पंचायत Dobri Salwala में अपनी ऊपर वर्णित पुत्री की जन्म तिथि 1–04–2012 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को Saniya की जन्म तिथि ग्राम पंचायत Dobri Salwala, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिती 1–06–2019 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि Saniya की जन्म तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 01–05–2019 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर, हिं0 प्र0।

ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिं प्र०

श्री Om Prakash पुत्र Late श्री Layak Ram, निवासी Bharli, तहसील पांवटा साहिब, जिला सिरमौर, हिं प्र० वादी।

बनाम

आम जनता

प्रतिवादी

प्रकरण संख्या : 08

उनवान मुकद्दमा—प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री Om Prakash पुत्र Late श्री Layak Ram, निवासी Bharli, तहसील पांवटा साहिब, जिला सिरमौर, हिं प्र० ने एक प्रार्थना—पत्र प्रस्तुत करके निवेदन किया है कि आवेदक किन्हीं कारणों से अपनी पुत्री Santosh Devi की मृत्यु तिथि 16-09-2016 का इन्द्राज निर्धारित अवधि के अन्दर सम्भवित ग्राम पंचायत में दर्ज नहीं करवा पाया है। इस बारे आवेदक द्वारा एक ब्यान हल्कि भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ—पत्र भी आवेदक ने अपने प्रार्थना—पत्र के साथ संलग्न किये हैं। आवेदक ने ग्राम पंचायत Shiva में अपनी ऊपर वर्णित पुत्री की मृत्यु तिथि 16-09-2016 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को Santosh Devi की मृत्यु तिथि ग्राम पंचायत Shiva, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिती 01-06-2019 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त Santosh Devi की मृत्यु तिथि को सम्भवित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार मृत्यु तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 1-05-2019 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर, हिं प्र०।

ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिं प्र०

श्री Ram Lal पुत्र Late श्री Tilak Raj, निवासी Sainwala Mubarikpur, तहसील पांवटा साहिब, जिला सिरमौर, हिं प्र० वादी।

बनाम

आम जनता

प्रतिवादी

प्रकरण संख्या : 5968

उनवान मुकद्दमा—प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री Ram Lal पुत्र Late श्री Tilak Raj, निवासी Sainwala Mubarikpur, तहसील पांवटा साहिब, जिला सिरमौर, हिं प्र० ने एक प्रार्थना—पत्र प्रस्तुत करके निवेदन किया है कि आवेदक किन्हीं कारणों से अपने

पिता श्री Tilak Raj की मृत्यु तिथि 10–11–1981 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाया है। इस बारे आवेदक द्वारा एक व्यान हल्फ भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ—पत्र भी आवेदक ने अपने प्रार्थना—पत्र के साथ संलग्न किये हैं। आवेदक ने ग्राम पंचायत Sainwala Mubarikpur में अपने ऊपर वर्णित पिता की मृत्यु तिथि 10–11–1981 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को Tilak Raj की मृत्यु तिथि ग्राम पंचायत Sainwala Mubarikpur, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिती 01–06–2019 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त Tilak Raj की मृत्यु तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार मृत्यु तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 1–05–2019 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर, हिं0 प्र0।

ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिं0 प्र0

श्री Mustak पुत्र श्री Ali Hussain, निवासी Gujjar Colony Naurangabad, तहसील पांवटा साहिब, जिला सिरमौर, हिं0 प्र0 वादी।

बनाम

आम जनता

प्रतिवादी

प्रकरण संख्या : 9813

उनवान मुकद्दमा—प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री Mustak पुत्र श्री Ali Hussain, निवासी Gujjar Colony Naurangabad, तहसील पांवटा साहिब, जिला सिरमौर, हिं0 प्र0 ने एक प्रार्थना—पत्र प्रस्तुत करके निवेदन किया है कि आवेदक किन्हीं कारणों से अपने पुत्र Liyakat की जन्म तिथि 25–02–2011 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाया है। इस बारे आवेदक द्वारा एक व्यान हल्फ भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ—पत्र भी आवेदक ने अपने प्रार्थना—पत्र के साथ संलग्न किये हैं। आवेदक ने ग्राम पंचायत Dhaura Kuan में अपने ऊपर वर्णित पुत्र की जन्म तिथि 25–02–2011 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को Liyakat की जन्म तिथि ग्राम पंचायत Dhaura Kuan, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिती 01–06–2019 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त Liyakat की जन्म तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 01–05–2019 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर, हिं0 प्र0।

ब अदालत श्री विपिन वर्मा, कार्यकारी दण्डाधिकारी, नौहराधार, जिला सिरमौर (हि० प्र०)

श्री विरेन्द्र सिंह पुत्र श्री जैसी राम, निवासी नौहराधार, तहसील नौहराधार, जिला सिरमौर, हि०प्र०

बनाम

आम जनता

उपरोक्त प्रार्थना—पत्र श्री विरेन्द्र सिंह पुत्र श्री जैसी राम, निवासी नौहराधार, तहसील नौहराधार, जिला सिरमौर, हि०प्र० ने अधीन धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत प्रस्तुत करके प्रार्थना की है कि उसकी पुत्री आचल जिसकी जन्म तिथि 01–08–2004 है का नाम ग्राम पंचायत नौहराधार के रिकार्ड में दर्ज नहीं करवाया गया है। जिसे प्रार्थी अब दर्ज करवाना चाहता है।

अतः सर्वसाधारण को इस इश्तहार द्वारा सूचित किया जाता है कि इस सम्बन्ध में यदि किसी व्यक्ति को उजर या एतराज हो तो वह स्वयं अथवा अपने प्रतिनिधि द्वारा मिति 15–06–2019 को सुबह दस बजे इस अदालत में उपस्थित आकर प्रस्तुत करे। बसूरत दीगर आंचल का नाम एवं जन्म तिथि को दर्ज करने के आदेश जारी कर दिये जायेंगे।

आज दिनांक 01–05–2019 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
तहसील नौहराधार, जिला सिरमौर (हि० प्र०)।

ब अदालत कार्यकारी दण्डाधिकारी, पञ्जैहरा, जिला सोलन, हिमाचल प्रदेश

मुकद्दमा नं० 02 / 2019

तारीख : 01–05–2019

सुच्चा सिंह पुत्र कर्म चन्द, निवासी गांव, डाकघर व उप—तहसील पञ्जैहरा, जिला सोलन, हिमाचल प्रदेश।

बनाम

आम जनता

दावा अन्तर्गत धारा 8(4) विवाह पंजीकरण अधिनियम, 1996.

इश्तहार बनाम आम जनता।

उपरोक्त मुकद्दमा उनवान वाला में प्रार्थी ने प्रार्थना—पत्र दिया है कि उसकी शादी दिनांक 11–11–2017 को सोनी पुत्री श्री करनैल, निवासी खरोटा, डाकघर भरतगढ़, तहसील व जिला रोपड़ (पंजाब) के साथ हुई है।

अतः आम जनता को सूचित किया जाता है कि सुच्चा सिंह व सोनी की शादी का इन्द्राज ग्राम पंचायत पञ्जैहरा में दर्ज करवाने बारे किसी को कोई एतराज हो तो वह दिनांक 02–06–2019 तक इस कार्यालय में उपस्थित होकर एतराज प्रस्तुत कर सकता है अन्यथा दिनांक 03–06–2019 को उक्त शादी के पंजीकरण हेतु आगामी कार्यवाही अमल में लाई जाएगी।

आज दिनांक 01–05–2019 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
पञ्जैहरा, जिला सोलन, हिमाचल प्रदेश।

Before Vikas Shukla, Sub-Divisional Magistrate, Arki, District Solan, H. P.

Case No. : 06/2019

Date of Institution : 14-05-2019

Date of Decision/
Pending for 15-06-2019

Smt. Shitanshu w/o Sh. Tarush Airi, r/o H. No. 227, Moti Bagh, Kapurthala (Punjab)
. .*Applicant.*

Versus

General Public

. .*Respondent.*

Proclamation regarding delayed registration of Birth event under section 13(3) of the Birth and Death Registration Act, 1969.

Smt. Shitanshu w/o Sh. Tarush Airi, r/o H. No. 227, Moti Bagh, Kapurthala (Punjab) has filed a case under section 13(3) of Birth & Death Registration Act, 1969 alongwith affidavits and other documents stating therein that she was born on 16-05-1990 at Village Dharath, P. O. Saryanj, Tehsil Arki but her birth has not be entered in the records of Gram Panchayat Saryanj, Tehsil Arki, District Solan, H.P. as per certificate No. 10 issued by the Registrar, Birth and Death Registration, GP Saryanj, Tehsil Arki.

Therefore, by this proclamation, the general public is hereby informed that any person having any objection for the registration of delayed date of birth of Smt. Shitanshu d/o Sh. Nand Lal Verma, and Smt. Naina Verma, may submit their objections in writing in this office on or before 15-06-2019 at 10.00 A.M., failing which no objection will be entertained after expiry of date of hearing.

Given under my hand and seal of this office on this 14th day of May, 2019.

Seal.

VIKAS SHUKLA (H.A.S.),
*Sub-Divisional Magistrate,
Arki, District Solan, H. P.*

**In the Court of Shri Jagpal Singh Chaudhary, Executive Magistrate (Naib-Tehsildar),
Solan, District Solan, Himachal Pradesh**

In the matter of :

Smt. Sumitra Devi d/o Sh. Ram Dayal, r/o Village Jhyana, P.O. Bholi, Tehsil & District Solan, Himachal Pradesh
. .*Applicant.*

Versus

General Public

. .*Respondent.*

Application under section 13(3) of Birth and Death Registration Act, 1969.

Smt. Sumitra Devi d/o Sh. Ram Dayal, r/o Village Jhyana P.O. Bholi, Tehsil & District Solan, Himachal Pradesh has moved an application before the undersigned under section 13(3) of Birth and Death Registration Act, 1969 alongwith affidavit and other documents for entering of her date of birth *i.e* 18-07-1984 at Home at Village Jhyana, P.O. Bholi, Tehsil & District Solan, Himachal Pradesh but her date of birth could not be entered in the record of Gram Panchayat Anhech.

Therefore, by this proclamation, the general public is hereby informed that any person having any objection(s) for the registration of delayed date of birth of Smt. Sumitra Devi d/o Sh. Ram Dayal, r/o Village Jhyana P.O. Bholi, Tehsil & District Solan, Himachal Pradesh may submit their objection in writing or appear in person in this court on or before 09-06-2019 at 10.00 A.M. failing which no objection will be entertained after expiry of date.

Given under my hand and seal of the court on this 10th day of May, 2019.

Seal.

JAGPAL SINGH CHAUDHARY,
*Executive Magistrate (Naib-Tehsildar),
Solan, District Solan (H. P.).*

**In the Court of Shri Jagpal Singh Chaudhary, Executive Magistrate (Naib-Tehsildar),
Solan, District Solan, Himachal Pradesh**

In the matter of :

Smt. Cheena Devi w/o Late Sh. Onkar Nath, r/o The Mall Road Solan, Tehsil & District Solan, Himachal Pradesh . . . *Applicant.*

Versus

General Public . . . *Respondent.*

Application under section 13(3) of Birth and Death Registration Act, 1969.

Smt. Cheena Devi w/o Late Sh. Onkar Nath, r/o The Mall Road Solan, Tehsil & District Solan, Himachal Pradesh has moved an application before the undersigned under section 13(3) of Birth and Death Registration Act, 1969 alongwith affidavit and other documents for entering of date of death of her husband namely Late Sh. Onkar Nath, *i.e* 16-10-1977 but his date of death could not be entered in the record of Municipal Council Solan.

Therefore, by this proclamation, the general public is hereby informed that any person having any objection(s) for the registration of delayed date of death of Late Sh. Onkar Nath, s/o Sh Rajinder Nath, r/o The Mall Road Solan, Tehsil & District Solan, Himachal Pradesh may submit their objection in writing or appear in person in this court on or before 09-06-2019 at 10.00 A.M. failing which no objection will be entertained after expiry of date.

Given under my hand and seal of the court on this 10th day of May, 2019.

Seal.

JAGPAL SINGH CHAUDHARY,
Executive Magistrate (Naib-Tehsildar),
Solan, District Solan (H. P.).